United States Court of Appeals

for the Second Circuit

APPENDIX

75-1118

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1118

UNITED STATES OF AMERICA,
Appellee,

—v.—

FRANK COTRONI and FRANK DASTI,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX
Volume IV—Pages A-2201 to A-2799

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THE COURT: All right, I think we understand each other.

(Jury present.)

TSR2 PM 5

THE COURT: Mr. Iannuzzi.

MR. IANNUZZI: I have no further questions.

THE COURT: Anything further?

MR. KLAR: No further questions.

THE COURT: You may step down.

Thank you.

Do you want to start with Mr. Stewart, to take some part of his testimony?

MR. PUCCIO: I have one other short witness that I would like to take.

THE COURT: This may be it. The weather is bad. I would have liked to stay until 5:30 or 6:00. I do not know if it will stick. I do not want to keep you too late. I would like to get some of Mr. Stewart's testimony if it is at all possible.

Call your next witness, Mr. Puccio.

MR. PUCCIO: The next witness is Norman Starvis.

THE COURT: Is he here?

MR. PUCCIO: I believe he is on his way, your Honor.

THE COURT: Would you call him, please.

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MR. PUCCIO: I am sorry, Stavis, S-t-a-v-i-s.

N O R M A N S T A V I S, having been first duly Sworn by the Clerk of the Court, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: William Stavis, S-t-a-v-i-s.

THE CLERK: Be seated.

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Stavis, what is your present occupation?

A I am the Manager of the Bretton Hall Hotel.

Q Where is that?

A 2350 Broadway, Manhattan.

Q Mr. Stavis, prior to your employment as the Manager of the Bretton Hall Hotel -- Prior to your employment there, had you worked at the Riverside Plaza Hotel?

A Yes.

Q In what capacity?

A I was the Manager there, too.

Q During what period of time were you Manager at the Riverside Plaza?

A I'd say around '70, '71.

Q Were you Manager of both during the year 1970 and 1971?

A Yes.

A 2203
Stavis - direct

Q Where was the Riverside Plaza Hotel located at that time?

A It's at 73rd Street and Broadway -- off Broadway -- 253 West 73rd, I think.

Q So it would be on 73rd Street?

It is still there?

A Yes.

Q On 73rd Street, between Broadway and West End Avenue; is that right?

A Yes.

Q Now, during your employment at the Riverside Plaza Hotel, did you become familiar with a guest at the hotel named Mrs. Summer?

A Yes.

Q And do you know whether or not she was married?

A Yes, she was.

Q And did you become familiar with Mr. Summer?

A Yes.

Q And it was your conclusion, I take it, that the gentleman you knew as Mr. Summer, and the woman you knew as Mrs. Summer were married; is that right?

MR. KLAR: I would object to the form of the question.

THE COURT: I will allow it.

16

Q And you remember whether or not there was a child?

A Yes, there was a girl -- a young daughter.

Q Approximately how old?

A About six or seven.

Q Let me show you Government's Exhibit 29 in evidence. Do you recognize the individual depicted in Government's Exhibit 29?

A Yes, that is Mr. Summer.

MR. PUCCIO: May I circulate that, please?

THE COURT: The jury previously saw that picture when it saw it identified by another witness as Paul Oddo.

MR. PUCCIO: That is correct, your Honor.

Your Honor, may I have these marked, please?

THE COURT: Let them be marked.

MR. PUCCIO: You may mark them all one Exhibit.

THE CLERK: Eight documents marked Government's Exhibit 45 for identification.

Q Let me show you Government's Exhibit 45 -- Do you recognize those as being records of the Riverside Plaza Hotel?

A Yes, these are the bills showing that they checked in November 17, 1969, and according to this, they checked out

in March -- March 15, 1971. This is the Registration.

Q Also included in the Exhibit is the Registration Card; is that correct?

A Yes.

MR. PUCCIO: I believe it has been stipulated that these are the records of the Riverside Plaza Hotel that were made in the ordinary course of business.

I ask that they be received in evidence at this time.

THE COURT: Show them to counsel.

(Documents shown to counsel.)

MR. IANNUZZI: I have no objection.

MR. KLAR: No objection.

THE COURT: Let them be marked.

THE CLERK: Government's Exhibit 45, previously marked for identification, now marked in evidence.

MR. PUCCIO: I would like to read from them, your Honor?

THE COURT: Yes.

MR. PUCCIO: These are bills, as Mr. Stavis indicated, and the Registration Card.

"Hedy Summer and Marion Summer," and indicates that "Marion Summer is the child."

The room number is "718."

May I circulate this?

I have no further questions.

(Document shown to jury.)

THE COURT: Any questions?

MR. IANNUZZI: Yes.

CROSS EXAMINATION

BY MR. IANNUZZI:

Q I ask you to look at this table at your extreme right here. Have you ever seen this gentleman before?

A No.

Q Have you ever seen him at your hotel?

A Not that I can remember.

Q By any chance, do you know a person named Giseppe Catania?

A No, sir.

Q I assume you couldn't say whether or not he was ever at your hotel?

A No, sir.

MR. IANNUZZI: I have no further questions.

THE COURT: Mr. Klar?

CROSS EXAMINATION

BY MR. KLAR:

Q Mr. Stavis, I would ask you to look at the gentleman in the blue suit, and I ask you if you can identify him?

A No, I cannot.

Q Have you ever seen him before?

A No.

MR. KLAR: I have no further questions.

THE COURT: You may step down. Thank you.

Mr. Puccio, I am ready to suspend as soon as the jury has seen the Exhibit.

If you leave Exhibits 39 on your seats, they will be picked up and it is an Exhibit marked in evidence, so at the appropriate time, if you ask for it, you may have it.

(continued on next page.)

THE COURT: All right. 1123

We will suspend at this time. The case will continue at 9:30 tomorrow.

I hope I can start promptly at 9:30.

Do not talk about the case either at home or when you reassemble tomorrow.

, 9:30 tomorrow morning.

No newspaper, and stay away from television or radio programs. I will be suspending promptly at 4:30 tomorrow.

(The jury withdrew at 5:05 P.M.)

(Out of hearing of the jury.)

THE COURT: Requests to Charge, Gentlemen?

MR. PUCCIO: I do not have any specific requests

THE COURT: You said that you hope I Charge along the lines of Toscanino.

I always have a problem. I do not keep my Charge, you know.

MR. PUCCIO: Well, I do. I have the Charge in Toscanino, and in Christian. They are all similar indictments, and the only difference here is that this is cocaine, and there is a substantive Count here.

We would ask, so far as the cocaine, that you Charge as to the United States versus Gonzales matter.

THE COURT: The boilerplate Charge I will do.

A 2209

MR. PUCCIO: I will give you a copy of Toscanino.

THE CLERK: Defendant Dasti's Request to Charge, marked Court Exhibit 1 for identification.

THE COURT: Do I understand that Mr. Stewart is the Government's last witness?

MR. PUCCIO: There is Mr. Stewart, then there is Agent Moser, who received the samples, and then there is the Chemist.

THE COURT: I don't know whether the defendants would concede that if the Chemist were called he would testify to the analysis in the report.

Have you turned over a copy of the report?

MR. PUCCIO: No.

THE COURT: Suppose you turn it over.

MR. PUCCIO: I do have an extra copy.

THE COURT: We will give you an extra copy. We will have it Xeroxed.

MR. PUCCIO: The gentleman's name is Stanley Blasof, and he is a Chemist now with Drug Enforcement Administration, and previously with Bureau of Narcotic Drugs.

THE COURT: What does he say it was?

MR. PUCCIO: Cocaine hydrochloride. There were two samples. One was taken on the 11th by Mr. Stewart, and given to Agent Moser. He says this sample was a

A 2210

quantity of cocaine, and was given to Special Agent Handoga and Moser onJanuary 11, 1971 at New York City by James Harris.

The evidence was retained in Agent Moser's possession. On January 12, this sample quantity of cocaine was weighed and sealed by Agent Moser in the presence of Agent Handoga; subsequently Agent Moser delivered this Exhibit to the United States Chemist who is Mr. Blasof, and he indicates that it was one package received from Agent Moser. At the time he received it, the seal was unbroken.

The analysis indicates the gross weight was 2.26 grams, net weight was 0.44 grams. It was in fact cocaine hydrochloride. That is pretty much it.

THE COURT: What was the purity?

MR. PUCCIO: In this report there is no indication of the purity.

I can ask the Chemist about this. He is in the Witness Room now.

On the second report concerning the second sample which we will show came from the same shipment, he does say it is cocaine hydrochloride. In this one he says the strength was 97.2 percent. There is an analysis of the strength in the second report, but not in the first one; but I can check that out.

THE COURT: Well, Mr. Iannuzzi and Mr. Klar can use their best judgment on it. You should be through by the morning.

MR. PUCCIO: Stewart, Moser and Mr. Blasof.

THE COURT: What will Moser testify to?

MR. PUCCIO: That he met with George Stewart on two occasions, and he received the sample and delivered it to the Chemist to establish the chain.

THE COURT: All right.

MR. PUCCIO: Then there is Mr. Baril, who testified in the hearing, who will testify concerning the items found on Dasti's person, including the name Somma, with the room number 718 on it.

THE COURT: You talked about time to go over this case with your client?

MR. IANNUZZI: Yes.

THE COURT: If you would like, you could make arrangements to spend the night with him tonight, two or three or four hours, and I will make the arrangements.

I don't know how long they will be kept in this building.

THE MARSHAL: We get them out as soon as possible.

THE COURT: All right.

MR. IANNUZZI: I have unfortunately made arrangements to interview other witnesses in this case tonight.

THE COURT: How about you, Mr. Klar?

MR. KLAR: Would it be possible to have them brought over a little earlier this morning, or tomorrow morning?

THE COURT: They have a problem.

THE MARSHAL: We cannot get them over here before 9:00.

THE COURT: Can you get them here at 9:00?

THE MARSHAL: 9:00 o'clock, or ten after.

THE COURT: Get them over as early as possible, and as soon as they are here, bring them up, and you try to get here at 9:00.

MR. IANNUZZI: We did this morning, but they did not arrive.

MR. PUCCIO: Mr. Iannuzzi indicated he wanted Mr. Catania back. I don't think I can have him here tomorrow.

THE COURT: You can bring him back on his case.

MR. PUCCIO: Maybe we can stipulate to it. I would ask for an offer of proof as to Mr. Catania.

THE COURT: What questions do you want to ask him?

MR. IANNUZZI: I want to ask him about certain statements that he made to the Mexican Government, and possibly be able to show prior inconsistent statements.

inconsistent with his testimony here.

MR. PUCCIO: This is recross. I object.

THE COURT: To the Mexican Government?

MR. IANNUZZI: Yes.

THE COURT: What statements do you intend to base it on?

Concerning this offense?

MR. IANNUZZI: Certainly.

MR. PUCCIO: There weren't any to my knowledge, none that I am aware of.

I would submit what it is is recross-examination.

The existence of Mr. Catania as the witness in this case has been known since the date Cotroni was arrested in Montreal, November 9, 1973. The entire Government's case for the most part, every detail and transaction that Mr. Catania testified, was made known in Canada.

THE COURT: What inconsistent statement?

Let us put it on the record. Is this the product of Mr. Pierson's investigation?

MR. PUCCIO: I think that is a good guess.

MR. IANNUZZI: What I would suggest --

THE COURT: I want to know if it is in the 3500 Material?

MR. IANNUZZI: No, it is not.

It is matters uncovered within recent time that were not available before.

They have become available in recent time. If I had them before, I would have asked questions at that time when the witness was on the stand.

THE COURT: Do you care to tell us what the inconsistent statements are?

MR. IANNUZZI: I would prefer not, except that I have a signed statement.

THE COURT: From whom?

MR. IANNUZZI: Catania.

THE COURT: All right, bring him back.

MR. PUCCIO: I would like to ask if this is a statement that was obtained through unknown means, or was it a -- is it a statement to the Mexican Government? I assume it was a statement handed over by the Mexican Government.

THE COURT: He says he has a statement signed by Catania. No question about that?

MR. IANNUZZI: No question about it. By this time I have become familiar with his handwriting, and there is no question about it.

THE COURT: Mr. Pierson moves in mysterious ways. When it has his trademark on it, I raise my eyebrows.

but if it is Catania's statement, signed by Mr. Catania, bring Mr. Catania back.

MR. PUCCIO: We will bring him back.

If this is another round of cross-examination on narcotic deals other than the deal in issue, I object.

MR. IANNUZZI: Oh, no.

MR. PUCCIO: If this is about Cotroni and nine kilos and Mr. Dasti, then I have no objection.

THE COURT: Not just credibility, not on Catania's--

MR. IANNUZZI: I just told you a prior inconsistent statement.

THE COURT: Oh, you're as definite as a breeze at 13,000 feet.

MR. PUCCIO: I don't want to see the statement, but I would ask the Court to examine the statement in camera.

THE COURT: No. I would rather err on the side of liberality in cross-examination.

I will take that representation. Now, Mr. Iannuzzi doesn't want to tell you what it is because you might prepare Mr. Catania for it, you see.

Let him come in fresh, and let Mr. Iannuzzi spring it on him so he can't claim there was any preparation.

MR. PUCCIO: All right.

I would only object to going through the trouble if it is not a statement inconsistent with what is in issue here. If it is Mr. Asaf's dealings, I think that has been brought out.

THE COURT: I am not going to allow matters that could have been examined on, and were examined on and use this as a way of rehashing it before the jury.

MR. PUCCIO: I might also add, if it is a statement that Mr. Catania made to the Mexican authorities, when he was arrested, I don't have in-hand existence of any, but I will guess where he states he was never told in the narcotics, I might stipulate that he made such a statement.

THE COURT: If it is something like that, I don't think you ought to ask for Mr. Catania to come back. I assume it is something that he can exculpate Mr. Cotroni, and/or Mr. Dasti.

MR. IANNUZZI: I think it has a tendence so to do, sir.

THE COURT: You know I have been here too long not to understand what that means. You have nothing, but you want him back. All right. Bring him back.

MR. IANNUZZI: I guess -- Well, I disagree with that, but I don't think --

THE COURT: Let us see how it turns out. And I am not going to ask this jury whether I am right or wrong, even when it is all over, knowing you as I do, you will still stand by what you say. When you are wrong, you stay wrong, and you won't stand corrected.

MR. IANNUZZI: I am as flexible as you are, and I know how flexible you are, your Honor.

THE COURT: I know how you mean that, too.

* * *

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U.S. DISTRICT COURT E.D. N.Y.
JAN 27 1975
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P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- : 73-CR-898

FRANK COTRONI, FRANK DASTI, :

Defendants. :

United States Courthouse
Brooklyn, New York

January 14, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

I hereby certify that the foregoing is a true and accurate stenographic notes in this proceeding.

Official Court Reporter
U. S. District Court

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

JOHN JANNUZZI, ESQ.
Attorney for Defendant Cotroni

MICHAEL LIAR, ESQ.
Attorney for Defendant Dasti

THE COURT: Mr. Puccio, I assume that you expect an aiding and abetting charge?

MR. PUCCIO: Yes, your Honor.

THE COURT: On Count Two?

MR. PUCCIO: Yes.

THE COURT: It's always so confusing when I charge aiding and abetting and conspiracy but I can see where Catroni certainly wasn't there on the receiving so you are certainly entitled to it.

I was going over the charge --

MR. PUCCIO: Your Honor doesn't have a charge on aiding and abetting --

THE COURT: It's just a form out of Devitt & Blackman.

MR. PUCCIO: If we have anything special, and I don't believe we do --

THE COURT: I try to distinguish aiding and abetting from conspiracy. You see, the acts are exactly the same. I am going to give a Pinkerton charge. I know neither side asks for it.

MR. PUCCIO: I mentioned it when it first came out.

THE COURT: I don't know whether the defendant knows what I mean.

Under Pinkerton, which is a Supreme Court case,

and I will give you the citation if you wish, where a crime is committed during the conspiracy and to advance the purposes of the conspiracy, the accused who is a member of the conspiracy, he is charged with [illegible] even if there is no proof that he committed any of the acts constituting the crime.

There is another case, I think it is Gillerman in the Second Circuit -- so be prepared for it.

MR. IANNUZZI: Judge, may I suggest in reference to this proposed witness Stuart Harris --

MR. PUCCIO: George Stewart.

MR. IANNUZZI: He is also called Harris. On the 31st of October, I have been informed by Mr. Polakoff, that at that time he requested from the Court that he be given the information concerning the -- May I just find the reference.

He asked for the conspirators, the names of the conspirators.

On page 42 of the minutes of October 31, if your Honor pleases, I believe this is when the defendant was arraigned, Mr. Polakoff indicated that there was mention of co-conspirators known and unknown and that they are entitled to them. The Court said, "Why don't you ask for that, that doesn't require a motion. Do you know of any unknown?"

And Mr. Puccio's reply was, "We will give you the names of the co-conspirators that are known."

I suggest, if your Honor pleases, that on October 31, 1974 --

MR. PUCCIO: And we did.

MR. IANNUZZI: These people are known.

THE COURT: You are not saying you didn't get the names, you are saying you got them late.

How are you prejudiced by that?

MR. IANNUZZI: We haven't had an opportunity to prepare --

THE COURT: How much time do you want?

MR. IANNUZZI: In order to go into Mr. Stewart, based on whatever this is, we would have required in addition to be prepared in reference to the Bynum situation.

THE COURT: How much time do you want?

MR. IANNUZZI: Will your Honor issue a writ of ad testificandum for Cordovano and Altamura.

THE COURT: Where are they?

MR. PUCCIO: Cordovano I believe is incarcerated and Altamura as far as I know is not in custody but --

THE COURT: Do you know where he is?

MR. PUCCIO: As I understand he is still on bail and he checks in with the United States Marshal

from time to time.

THE COURT: Bring him in if you can.

MR. PUCCIO: If we can.

I would like to point out for the record that we didn't get to Stewart yesterday and I had marked for Identification 3500-14 which are volumes of Stewart's testimony. I produced it yesterday. Neither counsel took them home and read them and made any attempt --

THE COURT: It is typical.

MR. IANNUZZI: No, it is not.

THE COURT: Counsel always ask for witnesses, hoping the Government can't produce them.

MR. IANNUZZI: That is not true.

THE COURT: Let me finish. After 14 years I know something about tactics. This is to give the record the appearance of prejudice. Every time that happens I make certain it is spread on the record and every attempt is made to comply with outlandish attempts of counsel.

You talk about the delays of the Government, yet there was no rush, no motion for this until this was actually pressed for trial.

MR. IANNUZZI: That is absolutely not so. That is absolutely incorrect and the record is clear on that. Mr. Polakoff asked on October 31, November 14th,

when there was a hearing and I was in court on November 27th, and I asked for them. Your Honor said you can make the motion on paper.

THE COURT: We will delay this case as long as necessary to get all the witnesses you want so you are not going to leave that on the record --

MR. IANNUZZI: Let me suggest this, so everything should be spread on the record, with reference to the three volumes, I didn't have to carry them to my office, Harry Boytel is an associate in the office two floors above mine. I can get all the information I want with thousands of pages to read.

THE COURT: Who represented Altamura then?

MR. PUCCIO: I think it was Mr. Rosenberg, Theodore Rosenberg.

THE COURT: Who represented the other conspirators?

MR. PUCCIO: For the defendant Cordovano, Solomon; Wright, Kenneth Saloway; Altamura, pro se --

THE COURT: Who did Boytel represent on the appeal?

MR. IANNUZZI: Bynum. The main defendant in that case. We didn't --

THE COURT: When for the first time did you realize that Mr. Stewart was going to be a witness?

MR. IANNUZZI: When?

THE COURT: Mr. Puccio?

MR. PUCCIO: May I check my notes?

(Pause.)

MR. PUCCIO: May I be excused for one minute, please.

I believe it was the third week in November that I first spoke with Mr. Stewart. Prior to speaking to him it was only speculation that he would be a witness.

MR. IANNUZZI: The third week of November preceded our hearing the day after Thanksgiving.

THE COURT: I realize that.

MR. PUCCIO: The hearing was on -- was not on the 27th.

MR. IANNUZZI: The 29th.

THE COURT: Do everything you can to bring in every witness Mr. Iannuzzi asks for.

MR. PUCCIO: If I have a list I can give it to the Marshal --

THE COURT: We will make a note of how many he uses.

MR. PUCCIO: Yes.

MR. IANNUZZI: I also foresee the possibility, if your Honor pleases, if these people are called, they may refuse to testify.

THE COURT: Of course. That is a possibility.

MR. IANNUZZI: In which case I would like to have the United States Attorney, and he has the power to do so, to grant them immunity as to anything they might testify about.

MR. PUCCIO: Your Honor, let me think about that. I believe in a recent case -- I know in a case I tried before Judge Weinstein this point was raised and we did not do it and we were affirmed on appeal. But let me look into that.

I would have to check with the Southern District. There is still litigation in that case. I don't want to make a decision right now. My reaction is we will not grant immunity.

THE COURT: I am asking you to do everything you can to eliminate all of these points on appeal. And that is all it is.

Bring in the witness, get him immunity, and after you do that -- because I would like to see whether he uses them, and that is the point --

MR. PUCCIO: As far as the immunity, I just don't believe it is a point on appeal, so to speak.

THE COURT: It is a special request by me to get them a grant of immunity if they won't testify because I am interested in knowing whether the defendant

will name the witnesses.

MR. PUCCIO: If these witnesses want to be recalcitrant, and insist on formal immunity, and indicate the Government will represent they won't be prosecuted, they still can refuse unless they get formal immunity. And getting formal immunity might take time, your Honor.

THE COURT: We are talking about use immunity as distinguished from transactional immunity?

MR. PUCCIO: The only kind of immunity the Department of Justice will request the Court to give at this time is use immunity. I am making a distinction between formal use immunity and an informal representation by the United States Attorney. If the witness wants formal immunity, and won't be satisfied with informal immunity, that will take time.

THE COURT: I see. Instead of petitioning to the Attorney General you will tell them --

MR. PUCCIO: I could call up Mr. Curran and ask for his concurrence and speak to the United States Attorney here and make a representation. But I point out to the Court that we have had situations where witnesses insisted on formal immunity.

THE COURT: Do the best you can because I am interested in another phase of it, in proving that the

defendant never wants the witnesses to testify any way, they just want points on appeal.

MR. IANNUZZI: I suggest this, I know you have a set and locked in opinion of defense attorneys --

THE COURT: And prosecutors.

MR. IANNUZZI: It may be so, but they are completely different opinions. I am an attorney and I am an officer of this court and many other courts. My only interest is truth getting on the scale, as I refer to the jury, and I suggest this, when you say, "You are only making points on appeal and --"

THE COURT: Is that what you want? You want the truth? You are not interested in giving your client every safeguard?

MR. IANNUZZI: Of course I am.

THE COURT: No, that's not what the truth gets.

MR. IANNUZZI: Both --

THE COURT: It can't be both.

MR. IANNUZZI: The truth sets people free and the --

THE COURT: Oh, you've been reading too much poetry.

MR. IANNUZZI: No, I write it.

THE COURT: You do? Well, don't get your functions mixed up. When you object to the wiretaps you

are talking about protecting your client's rights, not the truth.

MR. IANNUZZI: It may be in fact the Constitution has a grain or so of truth in it and those things are given as God-given rights to every person that is in this country and are equally important --

THE COURT: This is Court-made law that the evidence be barred --

MR. IANNUZZI: Not court-made law, the Constitution so states --

THE COURT: The Supreme Court --

MR. IANNUZZI: The Supreme Court only interprets the law.

THE COURT: Where does the Constitution say illegally received evidence cannot --

MR. IANNUZZI: Every person is protected, the property and --

THE COURT: That is not the reason the Supreme Court barred it.

MR. IANNUZZI: That is the basis.

THE COURT: No.

MR. IANNUZZI: If we didn't have it written in the Constitution --

THE COURT: The Supreme Court said in Mapp v. Ohio, in order to get adherence to the law we will disadvantage

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investigating officers who violate the Constitution. That had nothing to do with the provisions of the Constitution --

MR. IANNUZZI: May I suggest that the various cases also indicate that there has been an appearance of general search and seizure back to the colonial days which are equally important as Nardoni.

THE COURT: You think so.

THE IANNUZZI: I ask the Court to be sufficiently indulgent to think that defense attorneys are as righteous as the United States Attorney and have equal interests and are equally interested in the law.

THE COURT: Except the prosecutor has a duty to be fair. The defendant does not have an equivalent duty.

MR. IANNUZZI: If your Honor pleases, I have the same requirement and obligation as the United States Attorney because I am an attorney who has been requested by the People under the law and legislature to represent the defense and represent the defense in an adversary proceeding just as much as the prosecutor. I am interested in justice and I am not a charlatan and I take great exception to your remarks.

THE COURT: Don't tell me your tactics are any different than others and you set yourself apart.

MR. IANNUZZI: I don't set myself apart.

THE COURT: One of the tactics is to [illegible]

MR. IANNUZZI: Maybe it's necessary to --

THE COURT: Oh, that is different.

MR. IANNUZZI: In reference to the witnesses, I have never seen them. I might want to see them to talk to them to determine --

THE COURT: In the pursuit to adequately protect the record, I have listened to more outlandish requests to bring witnesses and documents in at tremendous cost made by all defense lawyers, and that includes you, Mr. Iannuzzi, and this request is one of them, and I want to make sure they get immunity and are compelled to testify, and after I do all that I predict you will say, "I can't or won't call them."

(Continued on next page.)

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(The following continued to be heard in the absence of the jury.)

MR. IANNUZZI: If I have an opportunity to determine by talking to the witnesses -- if I would have been able to do so if advised prior, it would be without the expense. It is an expense that is necessitated by Mr. Puccio, who knew in November that this man might be a witness. He should have indicated--

THE COURT: I will give you alternatives, at the end of Mr. Stewart's testimony, I will suspend the trial until next Monday and I will give you all the time you need to interview the witnesses.

How would you like that?

MR. IANNUZZI: That might be better.

THE COURT: All right, that's what we will do.

MR. PUCCIO: May I ask the Clerk to ask Mr. Butler to come up and give him a list of the people to immediately work on that?

THE COURT: He doesn't want that.

MR. PUCCIO: If I can have the bill of particulars, I will run through the names.

THE COURT: If you contact them, then the claim might be that you talked to them.

MR. PUCCIO: I will make the representation that I am not going to talk to any of the people. The

people incarcerated have to be produced by the United States Marshal.

THE COURT: I am talking about the others.

MR. PUCCIO: I am not going to contact anyone. If I may have the Court's copy of the bill of particulars, I will find out from Mr. Iannuzzi right now.

THE COURT: The usual time I have this request is the last day of trial.

MR. IANNUZZI: We have not precipitated this.

THE COURT: You certainly have.

MR. IANNUZZI: Mr. Puccio knew in November and never told us. If he told us then, we would not have this situation. I don't think it should be thrown on the shoulders of the defendant. Why don't you indicate to Mr. Puccio he should have advised us?

MR. PUCCIO: I might indicate for the record we are not required to furnish the defense with a list of Government witnesses. I indicated that in our bill of particulars.

MR. IANNUZZI: The failure to do so created this situation.

THE COURT: Names of co-conspirators --

MR. PUCCIO: We are not required --

THE COURT: In the bill of particulars I

directed you do it.

MR. PUCCIO: I did. I furnished the bill of particulars approximately two days after the order was entered.

MR. IANNUZZI: We were here on trial.

THE COURT: You could have done it before. The argument is he got it too late and now the trial must be delayed.

MR. PUCCIO: I have been presented with a set of motion papers that requested not only material that should not be turned over, but requesting material already turned over. I might point out certain parts of the motion papers are totally incomprehensible.

MR. IANNUZZI: Even answering papers served in the beginning of December --

MR. PUCCIO: I served answering papers prior to the time the Court heard the motion. That is a matter of record.

MR. IANNUZZI: May I also suggest as an additional argument, if your Honor pleases, that Mr. Stewart -- if he is as indicated, a person who was working with the Government prior to this alleged conspiracy -- that he is therefore tantamount to being an agent. Not an agent with a capital A, but an agent

of the Government to the extent he is participating and co-operating with the Government. I don't think a co-operating agent can be a conspirator.

THE COURT: Of course.

MR. IANNUZZI: This man, prior to the matter, was an informant co-operating with the Government. If that is true, he can't be a conspirator.

THE COURT: Exactly.

MR. RUCCIO: I agree. They are always listed as a co-conspirator. A strict legal definition is that he is not. If he is not, under Mr. Iannuzzi's argument, his name doesn't have to be furnished.

MR. IANNUZZI: Then he is required, before he gets a statement from people, just as any other agent, is required to give the proper admonition --

THE COURT: Submit the authority for what you are saying, Mr. Iannuzzi.

MR. IANNUZZI: May I just suggest in reference to your statement about the many outlandish requests -- now many outlandish requests are the law of the country.

THE COURT: One in a thousand.

MR. IANNUZZI: If a lawyer didn't come and tilt the windmills of justice, we would still have the law of the --

THE COURT: Do you have the list?

MR. PUCCIO: Yes. Mr. Orsini is incarcerated in Canada. Martinez is in Mexico. Jorge Bala is incarcerated. Mendolia -- well, Vanacore lives in Bronx, New York, I believe it is 2111 Horn Avenue. Vincent Altamura, as I pointed out before, we don't have an address, but he checks in with the United States Marshals in the Southern District. He is out on bail pending appeal.

Mr. Stewart is outside the courtroom. Mr. Bynum is present incarcerated. Mr. Cordovano is presently incarcerated.

THE COURT: Mr. Bynum is represented by Mr. Iannuzzi's associate?

MR. PUCCIO: That's right.

THE COURT: It was at his home that all this happened?

MR. PUCCIO: Mr. Bynum's mistress or common-law wife.

MR. IANNUZZI: When I say associate, we are not in the same office.

THE COURT: I thought you said you were associated.

MR. IANNUZZI: I said he is an associate in this case. He wrote a brief. That is as an

independent attorney giving me a legal brief. He is on the 51st and I am on the 49th.

THE COURT: You have a better chance of getting him here voluntarily.

MR. IANNUZZI: He is in jail.

THE COURT: You want Bynum?

MR. IANNUZZI: I have to see how it develops.

MR. PUCCIO: Mr. Catania has already appeared and will be produced again for Mr. Iannuzzi.

Mr. Wright is incarcerated. Jane Doe, also known as Jeannie, we will find out about.

Joseph Horvath is dead. Carlos Arena is still living in Canada. Madere is incarcerated.

THE COURT: You tell us who you want.

MR. IANNUZZI: All that I can suggest at the moment without knowing where the case is developing and how it is developing, as far as people probably being required, it's Cordovano --

THE COURT: What you're saying is that you won't know until after Stewart testifies?

MR. IANNUZZI: I don't know. You might determine his testimony is --

THE COURT: Irrelevant?

MR. IANNUZZI: Irrelevant, that's the word I wanted. After the testimony, it is not --

THE COURT: Don't count on it. Assume it is going to stand.

MR. IANNUZZI: Assuming it stands --

THE COURT: You are saying you won't know until after you've heard the testimony?

MR. IANNUZZI: I suggest Altamura and Cordovano.

THE COURT: Do you realize what you are saying? Having these names two months ago wouldn't have done you any good.

MR. IANNUZZI: That is not correct. If I had the names two months ago, I would have seen Mr. Bynum, Mr. Altamura, Mr. Cordovano -- I would have visited them in jail or out and I would have talked to them. I only know the Bynum case because when I was prosecuting a case in the Valconi case in New Jersey, it was the second largest or longest minimization hearing in conjunction with Mr. Boitel but I never spoke about the Bynum case but had I known this was involved, it would have been different. At the moment, all I can think of is Cordovano and Altamura.

THE COURT: I want them brought in as soon as possible.

MR. IANNUZZI: I am not suggesting it is limited to that. Those are the only names Mr. Stewart mentions. If we are talking about a complete

investigation, that is a different story.

THE COURT: I will also adjourn this case at your request until next Monday so that you can interview all the people.

MR. IANNUZZI: It may be a necessity.

THE COURT: You tell me you want that and you shall have it. That will eliminate point thirty-two from the appeal.

(continued on next page)

MR. IANNUZZI: I do not know that it will eliminate it.

THE COURT: It certainly will because youwill get the adjournment.

MR. IANNUZZI: It is an attempt on your Honor's part to aid in the elimination.

THE COURT: I do it with the same intent as you make the request. I am making sure the record indicates that if you ask for it, you will get it. Although it disrupts my calendar, you will get it.

MR. IANNUZZI: The difficulty may not be resolved in that we may not be able to get the testimony of these people. They may take the Fifth Amendment.

MR. PUCCIO: I will look into that.

THE COURT: That would be the same problem if you had the names two months ago.

MR. IANNUZZI: At least between then and now we would have been able to make sufficient legal argument and put together research that would perhaps aid the Court.

THE COURT: You couldn't have told me anything that I don't know now.

MR. IANNUZZI: I am envious of your position, sir.

(Jury present.)

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THE COURT: I am sorry that we were delayed. I know Juror No. 4's train was late and by the time she got here, we had a discussion that just ended. We probably saved half an hour any way.

Would you call your next witness, Mr. Puccio.

MR. PUCCIO: We call George Stewart.

G E O R G E N. S T E W A R T, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: George N. Stewart.

THE CLERK: Spell your name, please.

THE WITNESS: S-t-e-w-a-r-t.

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Stewart, are you married?

A Yes, sir.

Q Do you have any children?

A No, sir.

Q Now, Mr. Stewart, did there come a time during your life when you became involved in the narcotics business?

A Yes.

Q Approximately when did that occur?

A Spring of 1970.

Q Did you become involved after the spring of 1970

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in both the possession and sale of heroin and cocaine?

A Yes, I did.

Q Will you give us please some of the names of the people that you were in the narcotics business with or who you dealt with in the narcotics business.

A Mr. Joseph Cordovano, Mr. Angelo Mele, Mr. Vincent Altamura, Mr. Charles Passolino, Mr. Alvin Lee Bynum, to name a few.

(Continued on next page.)

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DIRECT EXAMINATION

BY MR. PUCCIO: (Cont.)

Q On approximately October 30, 1970, were you arrested by agents of the Bureau of Narcotics and Dangerous Drugs?

A Yes, sir, I was.

Q Where were you arrested?

A On Seventh Avenue and 157th Street near the Americana Hotel.

Q There were charges against you?

A Yes.

Q And you were charged with violation of the Federal narcotics laws?

A Yes, sir.

Q On September 23, 1970 you were arrested by agents of the Bureau of Narcotics and Dangerous Drugs?

A Correct, sir'

Q Again you were charged with violation of the Federal narcotics laws; is that correct?

Q Yes, sir.

Q Subsequent to your second arrest, did you begin to cooperate with the U. S. Government?

A Yes, sir.

Q After your cooperation with the U. S. Government began did you still continue to meet with and talk to persons

that you had been involved with in the narcotics business?

A Yes, sir.

Q So in effect you were acting in an undercover capacity?

A Yes, sir.

Q You would meet with the people you were dealing with in the narcotics business and then you would meet with the agents; is that correct?

A That's correct.

Q You would tell the agents what was happening?

A Yes.

Q So on January 4, 1971, I take it, you were acting really in the capacity of an informer or an undercover operative for the Bureau of Narcotics?

A Yes, sir.

Q Now, on January 4th, 1971, did you have occasion to meet with Mr. Vincent Altamura and Mr. Joseph Cordvano?

A Yes, sir, I did.

Q Do you recall where you met with them on that date?

A Pagano's Restaurant.

Q I take it you and Mr. Cordvano and Mr. Altamura had a conversation at this restaurant?

A Yes, sir.

MR. IANNUZZI: I am going to make an objection to any conversation as hearsay inasmuch as Mr. Altamura and Mr. Cordvano, for the record, are not properly co-conspirators in this matter.

THE COURT: That's a fact question for the jury. If the Government fails to prove beyond a reasonable doubt that either Mr. Altamura or Mr. Cordvano were members of the conspiracy, that the conspiracy is established, then disregard this entire testimony.

However, if the Government proves beyond a reasonable doubt that the conspiracy alleged in Count One of this indictment was established for the purposes and the time stated, that either Mr. Vincent Altamura or Mr. Joseph Cordvano knowingly and wilfully became members of that conspiracy, and if you find the conversation conducted by either one of those two were during the term of the conspiracy and concerned dealings in narcotics -- particularly in cocaine -- as set forth in Count One of the indictment, then whatever they said in pursuant of the objectives of the conspiracy and during the term of the conspiracy may be used against either of the accused who you find had knowingly and wilfully entered into the conspiracy.

Of course, if the Government fails to prove that either of the accused knowingly and wilfully entered into the conspiracy, then again disregard these -- this testimony.

MR. KLAR: I would like the record to reflect that the defendant Dasti joined in the application.

THE COURT: Yes. I will assume that any objection made by either lawyer enures to the benefit of both without the lawyer taking objection.

Go ahead.

BY MR. PUCCIO:

Q Now, you indicated, MR. Stewart, that at Pagano's Restaurant that you and Mr. Altamura and Mr. Cordvano had a conversation. I ask you if any part of that conversation concerned narcotics -- the narcotics business?

A Yes, sir.

Q Now, tell us as best you can recall -- withdrawn.

I'd like to direct your attention to the -- any part of that conversation which may have involved cocaine.

A Mr. Vincent Altamura --

Q Tell us now what was said by Mr. Altamura and Mr. Cordvano and yourself about cocaine.

A Yes, sir.

Mr. Altamura informed me Cordvano and himself that he was expecting a shipment of cocaine from or through

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Canada which should be arriving in the near future.

Q That was the extent of it at that time?

A Basically, yes, sir.

Q Did you or Mr. Cordvano comment on that statement of Mr. Altamura?

A Between ourselves later I think there was a comment made in fact that Mr. Altamura was, I think, was used, "an up and down guy,"sometimes he came through and sometimes he didn't.

We'd have to wait and see what happened.

THE COURT: Excuse me. I want to supplement the charge that I gave.

I understand the Government does not claim in any event that this witness was a conspirator?

MR. PUCCIO: Our claim is that Mr. Stewart was working for the Government at the time.

THE COURT: That anything Mr. Stewart said or did cannot in any way bind the accused on the theory that he was never a member of the conspiracy.

I am not assuming that the Government established a conspiracy. That's a fact question for the jury.

Go ahead.

DIRECT EXAMINATION

BY MR. PUCCIO: (Cont.)

Q Subsequently, Mr. Stewart, and on approximately January 8th, 1971, did you have another conversation with Mr. Cordvano concerning the cocaine?

A Yes, sir.

Q And tell us as best as you can recall what you said and what Mr. Cordvano said at that time?

A Mr. Cordvano told me --

MR. IANNUZZI: May we have a date on this?

MR. PUCCIO: Approximately the 8th.

MR. IANNUZZI: All right.

A Mr. Cordvano told me at that time that there would be a shipment of 24 kilos of cocaine of which he and Mr. Bynum were going to buy X amount, they didn't know how much at that time and the reason they were going to take the cocaine was to get an introduction to a new source of supply for heroin because at that time I was told there was supposed to be 24 kilos of heroin exactly two weeks following the delivery of the cocaine.

Q So that there was to be a delivery of cocaine and if you bought that there would be a subsequent delivery of heroin from the same source?

A Yes, sir.

MR. KLAR: I would object to the summary by Mr. Puccio, your Honor.

THE COURT: Overruled. I will allow it.

Q Did Mr. Cordvano indicate to you during this conversation who the source was?

A Mr. Altamura.

MR. IANNUZZI: I object to the witness correcting the U. S. Attorney. I think he has to answer the questions.

THE COURT: That was the answer to the question.

MR. IANNUZZI: I am sorry, I thought he corrected the name.

THE COURT: Go ahead.

(continued next page.)

DIRECT EXAMINATION

BY MR. PUCCIO: (Cont'd.)

Q Mr. Stewart, let me direct your attention to January 10, 1971. On that date, did you receive a telephone call from Joseph Cordvano?

A Yes, sir.

Q Approximately what time of day did you receive this telephone call?

A Late afternoon, about 6:00 o'clock I'd say -- 5:00, 6:00 o'clock.

Q Tell us as best as you can recall what Mr. Cordvano said to you and what you said to him on the telephone?

A Mr. Cordvano instructed me to get a packaging machine that was in my possession and go to the house of Mr. Alvin Lee Bynum.

Q Mr. Bynum was an associate of yours and Mr. Cordvano is in the narcotic business?

A Yes, sir.

Q Subsequent to this conversation with Mr. Cordvano, did you in fact take the machine that he had described and gone to this house in Brooklyn?

A Yes, sir, I did.

Q And whose house was that by the way?

A A house that I believed that belonged to Fanny May Garnet who was the common-law wife of, I believe, Mr. Bynum.

Q When you arrived at the house -- withdrawn. Approximately what time on the 10th, did you arrive at this house of Fanny May Garnet?

A I would say approximately 7:00, 7:30 in the evening.

Q When you arrived who was present?

A My Bynum, Miss Garnet and a girl by the name of Jeannie whose last name I don't know.

Q Did there come a time when Mr. Bynum and Miss Garnet and Jeannie left the residence?

A Yes, sir.

Q And you remained at the residence at that time, correct?

A Yes, sir.

Q By the way, did I ask you where this residence was located?

A No, sir.

Q Where was it located?

A 855 Linden Boulevard.

Q That's in Brooklyn?

A Yes, sir.

Q So there came a time when they left the residence and you remained, is that right?

A Yes, sir.

Q During the time that they were gone from the residence, did you receive another telephone call from Joseph Cordvano?

A Yes, sir.

Q Approximately as best as you can remember, what time did you receive the call?

A I would say 10:45.

Q In the evening of the 10th?

A Approximately.

Q As best as you can remember now, what did Mr. Cordvano say to you and what did you say to him?

A Mr. Cordvano instructed me to stay at the Bynum residence that he would be coming along shortly.

Q Did there come a time when Mr. Bynum returned to the residence on Linden Boulevard?

A Yes, sir.

Q Did he return alone or was there someone with him?

A He returned in the company of Miss Garnet and an Abraham Wright.

Q Now, how about the woman you referred to as

Jeannie, was she there at this time?

A Yes, sir.

Q Did she return with Mr. Bynum or had she been there while Mr. Bynum had left?

A She never left.

Q Did there come a time when Joseph Cordvano arrived at Miss Garnet's residence?

A Yes.

Q Approximately what time?

A 1:00 a.m. in the morning of the 11th.

Q What took place after Mr. Cordvano arrived?

A Mr. Cordvano arrived and with him, he had five kilos of cocaine. When he arrived, he gave a half kilo of cocaine to Mr. Bynum and retained possession of four and a half kilos. This five kilos belonged to Mr. Bynum but he wanted Mr. Cordvano and himself to retain possession. At that time Mr. Cordvano told me that Vinnie Altamura had arrived in his house in Syosset -- Mr. Cordvano's house --

Q Syosset, Long Island?

A Yes, early that evening with these five kilos. He said that Mr. Altamura had in his possession another four kilos of cocaine which he asked me if I could sell to help Mr. Altamura dispose of this.

THE COURT: Earlier that evening, what evening

are we talking about again?

THE WITNESS: January the 10th, the morning of January 11th, your Honor. I was informed at that time Mr. Altamura actually had nine kilos in his possession.

Q And the five that Mr. Cordvano had brought to the residence were five from those nine kilos?

A Yes, sir.

Q Did Mr. Cordvano indicate to you when Mr. Altamura had received the nine kilograms of cocaine?

A That same day -- Mr. Cordvano had said that Mr. Altamura had received the nine kilos of cocaine and had gone immediately to Mr. Cordvano's residence in Syosset.

Q Now, when you say that same day you mean that Mr. Cordvano told you that Mr. Altamura had received the nine kilograms of cocaine on the evening of the 10th?

A Yes, sir.

Q Now, did you have occasion, Mr. Stewart, to look at the five kilograms of cocaine that Mr. Cordvano had brought to the residence on Linden Boulevard?

A Yes, sir.

Q Did you look at it that evening?

A I looked at it that evening.

Q Would you be able to describe that cocaine

to us?

A Yes, sir.

Q Describe it, please.

A First of all, it was five kilos which was ten half kilo bags, plastic bags, with the cocaine itself was of a brownish color and a sticky -- a sticky type of consistency. It had partly powder and partly crystalline rock form cocaine in the bags.

THE COURT: Had you dealt with cocaine over a period?

THE WITNESS: Yes, sir.

THE COURT: Have you seen many different samples of cocaine?

THE WITNESS: Yes, sir.

THE COURT: Was this unusual in appearance and texture?

THE WITNESS: Yes, in the fact that it was brownish color and sticky appearance. It was unusual.

THE COURT: Had you seen anything like that before?

THE WITNESS: No, sir.

BY MR. PUCCIO:

Q Mr. Stewart, you indicated that Mr. Bynum owned the entire five kilos?

A Yes, sir.

Q When they were brought over?

A Yes, sir.

Q However, he had asked you and Mr. Cordvano to hold on to four and a half of them?

A Yes.

Q Did Mr. Bynum do anything with the half kilo that he kept there?

A He mixed that half kilo with a half kilo of adulterant making it into one kilo.

Q Did you see him do that?

A Yes, sir, on the kitchen table in front of me. I took a sample of this mixed cocaine.

THE COURT: We'll take just a short recess. The jury may be excused. Just a minute or two.

(Jury leaves courtroom)

(Continued on next page.)

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THE COURT: It just occurred to me that all this testimony would be unnecessary if the defendant would somehow concede or not contest the substance that was dealt in. I do not know whether they can do that. This is all just to get in the chemist's report that it was cocaine.

MR. PUCCIO: That's right. This witness does not know Mr. Dasti or Mr. Cotroni. I think a big point was made on cross-examination of Mr. Catania, that he is the only person that could testify that the cocaine existed, except the tapes are pretty clear.

THE COURT: I do not know there is anything in the tapes, except that Catania testified that when Martinez had talked to him about it, I think Martinez told him it was cocaine.

MR. PUCCIO: I think the point was made that we only had Catania's testimony, either his own observations or what Mr. Martinez told him.

THE COURT: It in no way deals with the defendants --

MR. PUCCIO: This is a short way of doing it.

THE COURT: A short way?

MR. PUCCIO: If it was lengthy testimony, we wouldn't do it.

MR. IANNUZZI: May I suggest that the Government

has never indicated -- not yesterday in this courtroom when Mr. Puccio indicated that perhaps we could concede the chemist's report -- never asking in fact whether we could work and concede as to the substance that was entirely a giant conspiracy. It is only after this evidence is before the jury that --

THE COURT: Why didn't you suggest it?

MR. PUCCIO: I didn't suggest a stipulation nor was I approached about it.

MR. IANNUZZI: This was to prove a vast conspiracy and now all of a sudden it is to show that there was some cocaine and no one ever suggested until it is before the jury that something might be worked out.

I move for a mistrial and the withdrawal of a juror.

THE COURT: Well, both motions are denied.

Mr. Puccio, the first conversation was as to 24 kilos?

MR. PUCCIO: That is right.

It turns out to be nine, according to the testimony.

THE COURT: Your argument is it is just conversation?

MR. PUCCIO: I know as a matter of fact that in one of the conversations between Dasti and Oddo,

they talked of 24 kilos.

THE COURT: Well, that ties it in.

All right, seat the jury.

(Jury present.)

MR. IANNUZZI: May we have a further opportunity, Mr. Puccio and myself, to discuss this matter on the record before we continue with this witness?

THE COURT: Now?

MR. IANNUZZI: I think so. This is in conjunction with our discussion a moment ago.

THE COURT: The jury may be excused.

(Jury leaves courtroom.)

MR. IANNUZZI: I suggest, if your Honor pleases that we have already had -- we have already had the testimony by the witness Catania that we have cocaine, that he had seen it and described it. I suggest, if your Honor pleases, that this entire testimony is elicited for the alleged miniscule purpose, if your Honor pleases, since we have it already in the case, of showing cocaine. But it is also bringing in a vast amount of prejudicial information which is totally irrelevant to this case, according to the Court's suggestion which wasn't the Government's suggestion yesterday afternoon.

Now, it is only to show cocaine, which is so

insignificant in this case compared to the prejudice involved in this kind of testimony, that I suggest that had the defendants been apprised of it -- which they never were -- that this was the purpose and not to show the continuing conspiracy, the vastness of the conspiray, and yesterday when I said this was a spin-off conspiracy your Honor said this was the same conspiracy and now we are proving the entire conspiracy and suddenly we are not -- we are proving cocaine. I suggest it is vastly prejudicial and I suggest that perhaps we might have been able to clarify or ameliorate the prejudice by making some kind of concession with reference to the substance, rather than have this kind of testimony which is only attempting to bolster by way of bringing in irrelevant information.

THE COURT: I do not retreat one millimeter from my statement yesterday that the Government can prove Vanocur and Altamura's part in the conspiracy.

Nothing that I said today in any way alters that position.

MR. IANNUZZI: The difficulty is if the defense at this point were to say --

THE COURT: What is the concession that you wanted to make?

MR. IANNUZZI: I am not suggesting any.

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THE COURT: Seat the jury.

Your motion for a mistrial is denied.

MR. IANNUZZI: If we were to concede, would your Honor concede to the jury to disregard that testimony?

THE COURT: This is not a bargaining counter.

MR. IANNUZZI: I am asking if that can be done at this point? I do not think so.

THE COURT: Seat the jury.

(Jury present.)

G E O R G E N. S T E W A R T, having been previously duly sworn, resumed and testified further as follows:

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Now, did there come a time, Mr. Stewart, when you and Mr. Cordovano left Miss Garnett's residence in Brooklyn?

A Yes, sir.

Q And did you have anything with you at that time?

A Yes, sir.

Q What did you have with you?

A Four and a half kilos of cocaine.

Q In addition to that, did you have the sample that you had taken from the half kilo that had been cut?

A Yes, sir.

Q Where did you go to at that time?

A Went to 310 East 70th Street in Manhattan.

Q Now, on the way over from Bynum's residence of Miss Garnet's residence in Brooklyn, did you and Mr. Cordvano have a conversation?

A Yes, sir.

Q Concerning the cocaine?

A Yes, sir.

Q Tell us as best you can remember what you said and what Mr. Cordvano said at this time?

A At that time Mr. Cordvano again stated that Mr. Altamura had four kilos of cocaine left, and that he wanted me to help Mr. Altamura sell this cocaine, to get it paid for and get it out of the way so that we would be in a position to buy the heroin in the two-week period when it was due.

Q Now, tell us what took place after you and Mr. Cordvano arrived at 310 East 70th Street, Manhattan?

A I locked the 4 1/2 kilos in cocaine into a store room. I had in the apartment and we left.

Q Was there ever any discussion between your or Mr. Cordvano or Mr. Bynum concerning how much Bynum paid for the cocaine per kilo?

A Yes, sir.

Q Who informed you of the price Mr. Bynum had paid?

A Mr. Cordvano informed me it was $14,000 per kilo.

Q Now, later on that day, that would be January 11th, 1971, did you have occasion to meet with a special agent of the Bureau of Narcotics?

A Yes, sir.

Q Who did you meet with?

A Special Agent Mozer and Handoga.

Q What took place at that time?

A I informed them of the previous night's proceedings and gave them the sample of cocaine that I had taken from Miss Garnet's residence.

Q Now, did there come a time, Mr. Stewart, subsequent to the 11th, when the four and a half kilograms of cocaine were removed from the residence at 310 East 70th Street?

A Yes, sir.

Q Were you present when they were removed?

A Yes, sir.

Q Who removed them?

A Mr. Cordvano.

Q And did there come a time subsequent to that when you had a conversation with Mr. Cordvano concerning these four and a half kilos of cocaine?

A Yes, sir.

Q And did he indicate to you at that time where the four and a half kilos were?

A Yes, sir.

Q Where did he tell you they were?

A He said he, Mr. Cordvano, stated that he had taken the four and a half kilos of cocaine to his mother's apartment which is located on Northern Boulevard in Flushing, and had left the cocaine in this apartment.

Q Did he indicate to you whether his mother was in town or out of town?

A No, his mother was visiting his sister in Florida. She was out of town for three or four months.

Q Did there come a time when you went to Mr. Cordvano's mother's apartment in Flushing?

A Yes, sir.

Q Was Mr. Cordvano with you at that time?

A Yes, sir.

Q Was this approximately January 18th, 1971?

A Yes, sir.

Q Tell us what took place at that time?

A At that time I removed a sample of the rock, crystallized type of cocaine that was in one of the packages of cocaine.

Q And was this the same four and a half kilos that had been delivered to Mr. Bynum's house during the early morning hours of the 11th?

A Yes, sir.

Q Now, on the next day, on January 19th, did you again meet with Agents Mozer and Handoga?

A Yes, sir.

Q What took place at this time?

A I gave them the sample of the cocaine that I removed from the Northern Boulevard apartment the night before.

Q Now, Mr. Stewart, as I understand it, you were involved in the narcotics business from approximately the spring of 1970 until -- at least until your two arrests at the end of '70. Is that correct?

A Yes, sir.

Q And then you continued meeting and dealing with people in the narcotics business as really a Government agent?

A Yes, sir.

Q Into the year 1971?

A Yes, sir.

Q And you ultimately later in '71 testified in the Grand Jury in the Southern District of New York; is that correct?

A Yes, sir.

Q About the people you had been in business with?

A Yes, sir.

Q Now, during this period of time that you were involved in the narcotics business, you were involved in both heroin and cocaine; is that right?

A Yes, sir.

Q And you had occasion, I suppose, to talk to people who were in the narcotics business who were either selling or buying narcotics about heroin and cocaine?

A Yes, sir.

Q Did you frequently have negotiations with other perons in the narcotics business concerning the purchase or sale of heroin and cocaine?

A Yes, sir.

Q Did you have many, many conversations about heroin and cocaine?

A Yes, sir.

Q Now, did you talk on the telephone with other parties in the narcotics business?

A Yes, sir.

Q Did you ever talk on the telephone about narcotics?

A Yes, sir.

MR. IANUZZI: I object to this line of questioning, if your Honor please --

THE COURT: Overruled. I will allow it.

MR. IANUZZI: This witness's experience is not conclusive proof of other people's activities.

THE COURT: I find him qualified to express an opinion on the customary usage of words to disguise narcotics.

Q Now, when you would talk on the telephone concerning narcotics, did you ever use the words heroin or cocaine?

A No, sir.

Q Would you use terms that conveyed to the other parties what you meant?

A Yes, sir.

Q Without using the actual words?

A Yes, sir.

Q Now, does the word shirts mean anything to you - withdrawn.

So you are familiar with terminology used in the narcotics business; is that correct?

A Yes, sir.

Q Does the word shirts mean anything to you in a narcotics context?

A I --

THE COURT: Sustained as to form.

Q Have you ever used the word shirts?

THE COURT: Sustained as to form. Do you know whether shirts is ever used or customarily used rather, in the illicit narcotics trade to convey a certain meaning?

THE WITNESS: I have used the word, yes, sir.

THE COURT: Not whether you used it. Is it commonly used?

THE WITNESS: I couldn't say, sir.

THE COURT: Objection sustained.

MR. PUCCIO: May I pursue this, your Honor?

THE COURT: Surely. And I am only interested if this witness knows what is commonly used in the trade. What this witness uses or used is immaterial. That's personal.

MR. PUCCIO: May I be heard on this, your Honor?

THE COURT: The Jury may be excused.

(The following occurred out of the hearing of the Jury. The Jury withdrew from the Courtroom at 10:40 A.M.)

MR. PUCCIO: Your Honor, we'll have other

testimony on this point and I would submit that we can, by calling various witnesses who may have used these words, we can establish that it certainly was a word used in the narcotics business.

THE COURT: You will have to call the other witnesses.

MR. PUCCIO: Will your Honor take this subject to connection?

THE COURT: No. If this were a conversation he heard of the defendants and you wanted to offer evidence to show that they weren't indeed talking about shirts or suits but rather cocaine and kilos, then that's the connecting testimony. But --

MR. PUCCIO: Well, we will have testimony like that as well, your Honor.

THE COURT: Well, if the defendants have no objection in light of the representation made. What is the difference what he used?

MR. PUCCIO: If he used it and all the ten or twelve people in the narcotics business used it, it seems to me it's a word used in the narcotics business.

THE COURT: What you're saying is that this witness knows the customary usage of the word in the

trade, but he said he doesn't know. I asked him that. I would think if he dealt with ten or twelve different persons and that's the language they used, that that would be the jargon of the trade, but that's not the testimony.

Don't you see, he's coming in and expressing an opinion as an expert. He's saying that in the trade, he, as an expert can tell this Jury that shirts, white shirts may very well mean heroin, suits may mean cocaine.

When they say three suits, it means three kilos of cocaine. That's his opinion as to what is used in the trade. What you offered was what he did, his usage. That's not material here, what he did.

The other argument you make, when he said he dealt with ten or twelve people, then he must know what the trade lingo is. hat is not what he said. He rejects that notion and says no. I don't know what the others do. I don't know what is general in the trade. So I can't permit him to express an opinion.

MR. IANUZZI: May I suggest that the suggestion before that the purpose of the witness was to show

cocaine has been undermined to the extent that we're now getting involved in Mr. Cordvano's mother's apartment and various other things. If he's talking about a sample and he could introduce it, he could do that, but to go on and on is just to develop, even conversations about heroin and the fact that heroin is going to come from Canada --

THE COURT: What is the purpose of this argument?

MR. IANUZZI: The purpose of it is that this is not a witness who is here to show cocaine. It's a ;witness here to prejudice the defendants now by even bringing in further heroin transactions, allegedly from Canada tying it into the same conspiracy.

I suggest that it's very prejudicial and I move for a mistrial.

THE COURT: You didn't object to this witness mentioning the heroin in the discussion. Why do you wait until now?

MR. IANUZZI: I objected to it before.

THE COURT: You objected to him discussing the heroin transactions.

MR. IANUZZI: To his entire testimony as being prejudicial.

THE COURT: On the ground that it wasn't part of the conspiracy.

MR. IANUZZI: On various grounds including the fact that he's going into heroin transactions that never took place.

THE COURT: Did you say you objected to his testifying about a heroin transaction?

MR. IANUZZI: Not specifically in those words.

THE COURT: That's what I thought. I didn't hear.

MR. IANUZZI: But I'm saying it now. I didn't stand up before because I object to his entire testimony. If you want, before when I said I have anobjection you said you have it on the ground. If you want me to stand up each and every time I will do it.

You indicated I had an objection to every one or your rulings. I objected to his testimony as being entirely prejudical. That's getting more so.

THE COURT: The time and volume of your objections are expressed all over the record. Why you didn't think it was important enough in all that

time and in all those words to say I also object to conversations relating to heroin, I can't understand, except that you now thought that might be another ground for mistrial.

MR. IANUZZI: It was ten or fifteen seconds ago that he mentioned it. I don't think I am untimely.

THE COURT: He mentioned it before. If you read the record you will see that. I looked toward your table to see if there was an objection. I don't know if it's objectionable, it may be.

MR. PUCCIO: It's in the 3500 material.

THE COURT: That doesn't make it admissible. You're talking about this conspiracy that dealt solely in cocaine and then you discuss, or the witness talks about a conversation which he was going to use the sale of the cocaine so he could buy the heroin.

MR. PUCCIO: That ties in with various other parts of the testimony in this case. Almost every important witness in the testimony in the case, it ties in.

THE COURT: I remember other testimony where they mentioned heroin and no objection was mentioned.

MR. PUCCIO: Almost every conversation that Oddo and Dasti and the others have indicates they are interested in heroin and this cocaine deal is an accomodation later on, there is a meeting with Orsini and Cotroni where they want to use him to transport heroin.

THE COURT: There is no objection to conversations in which Dasti participated mentioning heroin.

MR. IANUZZI: I object to the extent that every objection has been made at ever possible opportunity to all of the transactions.

There is no mention of heroin.

THE COURT: Mr. Catania said something about heroin and there was no objection.

Now in a conversation that doesn't involve these defendants and he specifically said this was Cordvano's statements unrelated to these defendants, and that you move for a mistrial. Denied.

I will charge the Jury, if you wish, that the conversation with Mr. Cordvano where he mentioned heroin has nothing whatever to do with these defendants. I am willing to do that.

MR. IANUZZI: If I may, I might suggest that apparently the United STates Attorney is purely,

possibly seeking from this witness because he feels it ties in with the rest of his case.

MR. PUCCIO: Absolutely.

MR. IANUZZI: I suggest it's totally improper.

MR. PUCCIO: Page 96 there is a meeting, Catania, Cotroni and Orsini. I ask him to tell us what Cotroni said and Orsini said and he said"

"Answer: Well, it is somewhat difficult to remember exactly, but in essence what was discussed was, of course, first the payment in full of the previous shipment which had not still been fully paid.

"Then I was asked, and I don't remember by which one of the two of them, whether it would be possible to obtain some heroin from Europe.

"I told them that it was, but I would first need the money.

"And then they asked me whether I was not in the position to get it, and they were in the position to get it, they asked me whether I would be able to receive it in Mexico and send it up to the United States through the same route as previously used.

"I told them that I had no problem with that. But again I repeated that I first needed to receive the remainder of the money which was still pending.

"And we agreed that a decision would come one way or the other, but that it was all depending upon the payment of the balance that was still outstanding."

In the tapes there is continual reference to the other one Mr. Dasti says to Oddo, "Do you know what I used to give you." Now we're talking about the other one beginning with a C, the other one is continually referred to.

When they are talking about cocaine the other one is heroin. We expect to have expert testimony by a RCMP member.

In addition, conversations between Cotroni and Dasti they are only interested in the other one, this cocaine transaction and accommodation.

In addition, Mr. Stewart's people are only interested in the heroin to buy the cocaine for that reason.

(Continued on the next page.)

THE COURT: It is a cocaine conspiracy charge not heroin.

MR. PUCCIO: As an explanation.

I know the point has been strongly made by defense counsel. Why is Catania or any of these people involved in this business and why did Catania offer the cocaine to Cotroni and why did Cotroni receive it?

The argument is everyone, all the way down the line, was looking towards a future heroin transaction. Cotroni was looking to make the heroin transaction with Catania.

Dasti was buying the cocaine to get the heroin.

Now, Mr. Stewart was buying cocaine to get the heroin.

There are 25 different references with -- where this is demonstrated by the testimony and proves the existence of the cocaine conspiracy, and proves who the members are.

MR. IANNUZZI: I suggest that we have had a fascinating display of the workings of the United States Attorneys' minds concerning how these matters are transacted, and perhaps matters are transacted, but you cannot try a cocaine conspiracy by proving

a heroin conspiracy or prejudice the cocaine trial because you bring in allusions to heroin.

If one says the other one, it does not mean the other thing, it could mean anything.

THE COURT: It could mean the other suit's size 38.

MR. IANNUZZI: Anything.

Now, the words do not, in and of themselves, mean anything.

The meaning is now being embroidered and purposely by the United States Attorney to mean heroin and to bring proof to other narcotic transactions, in order to prejudice the defendants.

It is not fair, it is not proper, nor is it admissible.

Any references to it are merely serving a purpose of prejudicing the defendants and I am suggesting that it be discontinued.

I suggest it is too late and again I move for a mistrial.

THE COURT: Denied.

MR. IANNUZZI: This is improper.

THE COURT: I am fascinated by this argument, that the discussions about heroin are material to the issues of this case because this conspiracy was

organized merely to get the money to go into the heroin business or make the heroin buy.

MR. PUCCIO: I think the cocaine deal was embarked upon in order to establish the connection, rather than the money.

In other words, Mr. Cotroni, by taking this cocaine, and we can infer this from Catania's connection, by taking the cocaine and doing the favor of getting rid of the cocaine,they were looking towards a future heroin deal.

THE COURT: Doesn't Dasti stay in one conversation, try to get 21, because then we will break even because they are complaining about the quality?

He said we will take the loss and make it up the next time.

MR. PUCCIO: There is a conversation, and I can't put my finger on it now, that where Dasti says there will be a couple of dozen and Vanacora says I have a guy who will take four or five.

THE COURT: You are assuming it is Vanacora?

MR. PUCCIO: It has been identified as Vanacora.

THE COURT: I am getting the names mixed up. I meant Corovano.

You assume it was Corovano who was the

unidentified American.

MR. PUCCIO: I am assuming that, and I think it is clear from the testimony that Oddo and Vanacora passed it on to Altamura.

That is as far as we have to go because Stewart met with Altamura directly.

THE COURT: You said there was an unidentified American in one of those conversations.

MR. PUCCIO: Mr. Vanacora, -- that was Altamura.

On conversation number 2, line 37, Dasti says, I can get it, a few dozen, which is 24 --

MR. IANNUZZI: Two dozens is 24.

A few dozens is --

THE COURT: Oh, I learned a group is three or more.

MR. IANNUZZI: A few is a group. A couple of dozen is one thing. A few is three or more.

No question about it, and I am sure the dictionary will agree with me. A couple is two.

If you are using those references --

THE COURT: Without going into the caution as to whether they were so precise in the use of the English language, I doubt your definition.

MR. IANNUZZI: Perhaps we can check it out.

THE COURT: Why don't you do that?

MR. IANNUZZI; I certainly will.

THE COURT: That a few is three or more?

MR. IANNUZZI: Certainly.

THE COURT: You can go into my chambers and use the unabridged dictionary. You may have to use the larger volume for that.

MR. IANNUZZI; Certainly.

MR. PUCCIO: In conversation number 5, Vanacora, Dasti says on line 62, can you go around 12, meaning the price, 12,000, and Vanacora says no.

Dasti says, you can't go?

Vanacora says not for all of it.

Dasti says, what Vanacora says maybe there is a guy who will take 4 or 5 and there is a guy who took 5 and that was Bynum.

THE COURT: The most interesting thing is that the testimony is that 9 kilos of unusually colored and textured cocaine arrived in New York the very day the testimony shows the delivery is made. That, to me, is a connection and to me, is the thread to which the conspiracy runs to bring Bynum and Corovano and Altamura into the conspiracy.

The other thing, to me, is reaching too far.

MR. KLAR: They are talking about 24 kilos

and not 9.

MR. PUCCIO: So it is DAsti.

THE COURT: All right. It is an argument.

MR. IANNUZZI: That is an assumption.

THE COURT: Both sides can make the argument. It is not an assumption.

The point is, they are talking about a few dozen. Even if the dictionary says a few is three or more, and I have Mr. Iannuzzi's absolute confirmation on that --

MR. IANNUZZI; Here is a good sized dictionary.

THE COURT: Well, they used this word back in '71.

What does a few mean?

It says, not many. Small number indicating a small number of units or individuals which constitute a whole.

Well, you used your poetic license again.

MR. IANNUZZI: Does it say that it means three?

THE COURT: No. I didn't say that.

MR. IANNUZZI: It never will. One will never refer to a few friends when you mean two. No one ever used the word few for two except for Mr. Puccio.

MR. PUCCIO: And except for Mr. Dasti.

MR. IANNUZZI: I suggest Mr. Puccio's interpretation is incorrect.

THE COURT: I am convinced that they haven't even moved for an instruction, but now I will tell them that I will not so instruct the jury, because I do understand the circumstances of this case that proof of narcotics conversations were inextricably included in the conversations dealing with cocaine.

MR. IANNUZZI: May I suggest that this witness' conversations with other people are not part of the same conspiracy? I suggest it is very prejudicial to suggest they are. He is dealing with all kinds of people.

Now, Mr. Bynum apparently was a big dealer. He had a machine to seal packages.

THE COURT: You made no motion.

MR. IANNUZZI: I have.

I suggest the motion and objection to this man's testimony and application for a mistrial as to the prejudicial aspect, sir, to -- they have all been made. His testimony is totally prejudicial.

When I make a motion, that means all his testimony, including 3500 material, relative to heroin.

I made a motion to all his testimony.

THE COURT: That motion is denied.

MR. KLAR: You indicated before that you would make a limited instruction.

THE COURT: I won't give it without a request. You tell me what the limiting instruction should be.

MR. KLAR: No inferences to be drawn from the fact that the heroin transaction which this witness refers to, to take place in two weeks, is coming from Canada.

MR. PUCCIO: I object to that. That is a clear inference from all the testimony in this case.

MR. KLAR: As a matter of fact --

MR. PUCCIO: Mr. Dasti's conversation, when he says --

MR. IANNUZZI: May I request that the testimony further be stricken on the ground that it is not part of the alleged conspiracy for which the indictment, bill of particulars has been drawn?

THE COURT: That is the only argument that bothers me. That is the one thing I had in mind. It is outside of the scope of the indictment, but I can think of a reason for keeping it in and the

limiting instruction would be to instruct the jury that this conspiracy consists or alleges a cocaine conspiracy, and that cocaine conspiracy, this cocaine conspiracy involves only the importation of 9 kilograms of cocaine, from Mexico into New York, and the proliferation cocaine and the conspiracy to include Corovano, Altamura, Bynum, and the others, that it does not include any discussions or negotiations concerning heroin, however -- and you will like the balance, and I care about being correct in the appraisal of the testimony and how it is to be used -- however, the Government's theory is that this conspiracy was entered into in order to purchase 24 kilograms of heroin and all the testimony concerning the heroin transaction may be used to determine whether the cocaine conspiracy was entered into and for all other purposes, they disregard all conversations concerning the heroin.

In other words, the intention to enter into, they needed the money, they figured we would go into this deal first so we can go into the other.

As such, there is no proof of a heroin conspiracy.

MR. PUCCIO: I only ask not to indicate to the jury that our theory is there will be 24

kilograms of heroin. That is Mr. Stewart's testimony.

THE COURT: That limiting instruction is either now or in my main charge.

MR. PUCCIO: In conversation number 5, line 18, Mr. Vanacora, in talking about cocaine, says to Dasti, it is most, you know, it is too -- less than the other thing, a lot less, because there is a lot of that around.

Dasti says, But on the other thing, my God.

I know, but the other thing has to wait.

Mr. Vanacora says yes, and Dasti says yes, I am gonna have it anyway.

He says, soon as this one goes through, I am going to have it for sure.

(continued next page.)

THE COURT: That is the instruction I am willing to give in light of the testimony that has been pointed out to me.

MR. IANNUZZI: May I suggest, if your Honor pleases, in addition, based on what Mr. Puccio says, if in fact Mr. Dasti was involved in the cocaine Conspiracy, and intended to become involved in the heroin Conspiracy in which Mr. Cotroni has not taken part, and doesn't know anything about, we are prejudicing Mr. Cotroni as a result of evidence against Mr. Dasti, and it may well be a case can be made, at least for the jury to determine, in reference to whether or not all the conversations between Vanacora and Oddo -- but Mr. Puccio has not said anything that Mr. Cotroni was involved in that --

MR. PUCCIO: Absolutely.

MR. IANNUZZI: I suggest that this is something in which perhaps one defendant may be involved in a continuing Conspiracy, and I suggest this, what does that have to do with the other defendant? I suggest there is no proof in this case with reference to it.

Now, we have the case where the two defendants' interests are completely different. I suggested a severance, and I suggest one now, moreover, when you say they got together to buy cocaine in order to afford heroin,

you are talking about Stewart and Cordvano. What does it have to do with these defendants? Does that prove these defendants are involved? I suggest this part of the case is so complex and so confusing that without having been pre-warned and advised by Mr. Puccio, and Mr. Puccio knew it before we began the hearings, that Puccio, by his omission, prejudiced the defendants, and I suggest severely so.

MR. PUCCIO: I want for the record to state I by no means meant to suggest that Mr. Cotroni wasn't involved. It is our theory Mr. Cotroni was involved in the cocaine involvement as an entree to a heroin transaction.

Further, it is the theory of the Government that Mr. Dasti is a tool of Mr. Cotroni, or an instrument of Mr. Cotroni.

MR. IANNUZZI: I suggest, if your Honor pleases, it may very well be that a defendant can be involved in a separate secondary crime with which the first has no participation --

THE COURT: I think the record is pretty clear Mr. Dasti was acting at the instructions and directions of Mr. Cotroni in every move he made.

MR. IANNUZZI: I suggest that as a matter isn't correct. For instance, we have the alleged -- if we take

these conversations at the interpretation of the United States Attorney --

THE COURT: Wait a minute. Can we come back to what I wanted to say about seven minutes ago?

MR. IANNUZZI: Yes.

THE COURT: Are the defendants satisfied with that?

MR. IANNUZZI: I object to the fact that we are involved in this entire testimony.

THE COURT: Do you object to that instruction?

MR. KLAR: I ask that the instructions be given at this time.

THE COURT: As Indicated?

MR. KLAR: I object, of course, to any reference to a heroin transaction.

THE COURT: No, I will give it all or nothing. If you want an instruction on the heroin conversations, the heroin evidence stays in on two theories, one, it is before the jury and hasn't been objected to; and two, that under the Government's theory which comes within the charge in the indictment, it is admissible.

MR. IANNUZZI: Is it your Honor's ruling, so I understand it, that, assuming for the moment, which I disagree with because I say a proper objection was made, assuming an objection wasn't made, when an objection is

made, and properly so, your Honor would continue the prejudicial evidence because there was some --

THE COURT: I don't answer questions.

MR. IANNUZZI: Very well.

THE COURT: Seat the jury.

MR. PUCCIO: One further point.

THE COURT: It is admissible, therefore, if it is prejudicial, it is prejudicial in the sense that all admissible evidence against the defendants is prejudicial, and I don't have to reach the second question.

I want the record to note you made no objection.

MR. IANNUZZI: I am saying now --

THE COURT: You never did, it is a second thought.

MR. IANNUZZI: My objection has been on the record from the outset yesterday --

THE COURT: Never.

MR. IANNUZZI: Before I saw this man --

THE COURT: You can say it a hundred times, I will say a hundred time, Never. It's a second thought. Third thought.

MR. PUCCIO: One more point. I don't want to belabor this any more, but your Honor ruled Mr. Stewart -- that "shirts" was not a term that he knew to be used in the trade, but he in fact, used it. Would it be admissible for him to testify he used code words on the phone

during his narcotic transactions?

THE COURT: What he said is immaterial.

MR. PUCCIO: All right.

THE COURT: Only what he knows to be the custom and usage in the trade.

MR. PUCCIO: Which would include others, in addition to his group of people.

THE COURT: Generally in the trade. He knows there are certain words used. I can't think of any right now. I heard them so many times. There are certain words used in the trade. The witness must come in as an expert and be qualified as an expert, and then say I know what the custom and usage in the trade is, they are used in the trade.

Seat the jury.

(The jury is in the jury box.)

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. PUCCIO: (continuing)

Q Mr. Stewart, you subsequently were sentenced in the Southern District of New York, is that correct?

A Yes, sir.

Q What sentence did you receive?

A Seven years, with four years probation.

Q Would that be a probationary term, with four years

special parole?

A No, I think it was seven years suspended sentence. I am not sure of the exact terminology, with four years probation. I am half way through four years probation.

MR. PUCCIO: No further questions.

MR. IANNUZZI: May we have further 3500 Material concerning this witness?

MR. PUCCIO: No.

THE COURT: That is the answer.

MR. IANNUZZI: I would like to have his past history.

MR. PUCCIO: You have it.

MR. IANNUZZI: I don't have anything concerning it.

THE COURT: Past record is not 3500 Material.

MR. IANNUZZI: I call for production of it, if your Honor pleases.

THE COURT: That is something different.

MR. PUCCIO: All right, we will -- Well, I will ask Mr. Stewart.

DIRECT EXAMINATION

BY MR. PUCCIO: (continuing)

Q Mr. Stewart, prior to your arrest by the Bureau of Narcotics in I believe it was the first one -- Was the first

one October or November?

A October 30, 1970.

Q You were arrested by the Bureau of Narcotics October 30th and again December, 1970?

A Yes.

Q Prior to that, were you ever arrested?

A No.

Q That was your first arrest?

A Yes, sir.

Q Were you ever charged with a crime prior to that?

A No, sir.

Q Prior to your arrest, in addition to your affairs in the narcotics business, what type of legitimate business were you in, if any?

A A salesman. I was in the military, in sales, then I owned a restaurant in New York.

Q You were in the military?

A Yes.

Q How many years?

A Three and a half years.

Q Then you were in sales, and the restaurant business?

A Yes, sir.

MR. PUCCIO: Your Honor, I will have that document

located.

THE COURT: All right.

Have you been arrested since?

THE WITNESS: No.

THE COURT: Your only arrests in your entire life were the arrests for narcotic sales you testified to?

THE WITNESS: Yes, sir.

THE COURT: All right, Mr. Iannuzzi.

CROSS EXAMINATION

BY MR. IANNUZZI:

Q Mr. Stewart, if anything I ask you has a tendency to confuse you, would you be kind enough to advise me so I can rephrase the question?

A Yes, sir.

Q It is your testimony that some time in 1970 you, after having been arrested on two charges of narcotics transactions, became basically an Undercover Agent for the authorities, is that correct?

A Yes, sir.

Q And your participation in whatever transactions you had with the other people, I think the names are Cordvano and Bynum and Altamura, were all undertaken on that basis?

A Yes, sir.

Q Would it be fair to say you had not undertaken any

activities with reference to Mr. Bynum or others until after your arrest?

A Would you please rephrase that? I don't understand. You mean, was I involved them prior to my arrest?

Q Yes.

A Yes, definitely.

Q When you returned, you were in the capacity of an Agent?

A I guess so.

Q And now, when you were arrested, you found yourself -- Withdrawn.

The first time in October you found yourself in rather serious difficulty, is that correct?

A Yes.

Q You were aware if such were true, it was a violation of the narcotics law, whatever you were charged with?

A Yes, sir.

Q And that there would be a serious penalty involved?

A Yes, sir.

Q And what was the penalty?

A I believe it is a minimum of five years. I am not sure of the exact law.

Q Was it at a time it was twenty years in jail, and a minimum amount of time you had to spend in jail was five years?

A I believe so.

Q In other words, you couldn't get a suspended sentence under the charge you were charged with?

A I am not completely familiar with it, but I believe that is correct, sir.

Q You would have to have had to go to jail for five years for your arrest in October of 1970, is that right?

A Yes.

Q While you were out on bail, is it a -- Withdrawn. Were you out of bail?

A Yes, sir.

Q After you were out on bail, were you arrested again for a separate and distinct narcotics transaction?

A Yes, sir.

Q Would you suggest that also bore the same penalty?

A Yes.

Q So that you were facing the mandatory sentence of ten years in jail?

A Yes, sir.

Q Not a possible ten years, but mandatory ten, and possibly up to forty, is that correct?

A Yes.

Q Was there one count, or more than one count in the charges?

A I am not absolutely sure. I think there was one to each of them.

MR. IANNUZZI: May we have a concession from Mr. Puccio concerning those, if he knows?

MR. PUCCIO: I don't know, your Honor, but I can check.

THE COURT: Is that --

MR. PUCCIO: The question is, is there one --

MR. IANNUZZI: One or more than one Count on each Indictment. I assume each charge was in an indictment.

THE COURT: I will charge the jury that two offenses under 174 require a mandatory minimum of five years, and does not require a consecutive mandatory, so two mandatory terms does not necessarily mean a mandatory minimum of ten years.

MR. IANNUZZI: Would your Honor take judicial notice, of course, the Judge is certainly free to give the two five-year mandatory --

THE COURT: Now you are talking about maximums.

MR. IANNUZZI: No, these are minimums.

THE COURT: A Judge in two sentences under Section 174, which this witness apparently violated, had a maximum of forty years.

MR. IANNUZZI: Yes, sir.

THE COURT: But no mandatory minimum of ten years.

MR. IANNUZZI: Mandatory minimum of at least five years, sir.

THE COURT: That's right.

Q And, when you had conversations -- Withdrawn.

However, were you permitted by the United States Government to plead Guilty to a lesser charge?

A Yes.

Q Were you permitted to plead guilty to a charge which would not mandate time in jail?

A Yes, sir.

Q In other words, you were permitted to plead to somethings you could get a suspended sentence --

A Yes.

Q You knew that before you testified against various other people?

A I knew what? That I could get a suspended sentence?

Q Yes.

A Yes, sir.

(continued on next page.)

Q As a matter of fact, didn't the Government say they would bring your cooperation to the attention of the sentencing judge?

A I was sure hoping for it.

Q Did they not indicate they would?

A No.

Q They didn't indicate they would make your cooperation known to the judge?

A Make it known, yes.

Q As a matter of fact, when you were sentenced, although you said you got seven years, you didn't go to jail?

A No, sir.

Q As a matter of fact, right now you are out in the street?

A Yes, sir.

Q Not in New York, though?

A No.

Q Does the United States Government help to support you?

A No.

Q Did they help support you during this period of time?

A Yes.

Q How did they help to support you?

A I was receiving per diem while I was awaiting for the trial to come up to testify.

Q Not your trial, somebody else's trial?

A The conspiracy trial that I was to testify in.

Q Not this trial?

A No.

Q Bynum's case?

A Yes.

Q You were paid how much per day?

A $50 a day.

Q You are getting $50 a day from the United States Government while waiting to testify against somebody else?

A Yes.

Q In addition to the fact your cooperation was going to be made known so you can get a benefit in reference to your case?

A Yes, sir.

Q What other way did the United States Government help to support you?

A After -- I believe it was June I received --

Q June of what year?

A 1972. I received a $5,000 check from the United States Government.

Q Go ahead.

A Since then I haven't received any money.

Q Did they pay you for your good services rendered to date?

Did they pay you because you earned a benefit from the --

MR. PUCCIO: Objection.

THE COURT: Sustained as to form.

Q What was your understanding when you received $5,000 from the United States Government?

MR. PUCCIO: Objection.

THE COURT: I will allow it.

A Basically I believe it was to help me relocate and get re-established in some sort of a normal life.

Q The Government paid you money in order to get you out of the position that you had been in before you undertook the narcotics transactions?

A Position being my location.

Q Also started getting you started in some kind of legitimate business?

A Whatever I chose to do, yes, sir.

Q How long were they paying you $50 a day?

A I believe it started in July of 1971 and went on to May of 1972. It was not always $50 a day. At times it was less. It fluctuated.

Q What was that?

A It was not always $50 a day. At times it was less. Fluctuated.

Q Was it ever more?

A No.

Q You say that you were arrested in October of '70 and also in December of '70?

A Yes.

Q When is it you pleaded guilty?

A I pleaded guilty in September. No, I am sorry, I pleaded guilty, I believe, itwas July of 1972.

Q July '72?

A Yes, sir.

Q So that while you were under indictment by the United States Government they were paying you $50, or it fluctuated more or less $50 a day while you were charged with violating the law subject to twenty years in jail they were giving you $50 a day?

A Yes, sir.

Q As a matter of fact, when were you sent?

A September of 1972.

Q When is it that you were testifying against these other people?

A In May of 1972. Or April.

Q So that April or May, 1972, in June of 1972 before you were sentenced, before you were given a suspended sentence, after you testified they gave you $5,000 bonus?

A Yes, sir.

Q What was the charge against you in October of 1970 for which you pleaded guilty?

A I believe it was possession and sale of heroin.

Q How much heroin was involved?

A Two kilos.

Q Was that the entire amount of the weight of the heroin in that indictment or charge against you?

A I believe there was another one-eighth of a kilo involved in that.

Q How about in December?

A December was sale of heroin which had taken place in July of that year, of 1970.

Q What was involved in that?

A I believe it was a half-kilo of heroin.

Q So that you were selling heroin on the street?

A Yes, sir.

Q In little bags to people for five and ten dollars?

A No, sir.

Q How much were you selling it for?

A Quarter, half, in kilo quantities.

Q This is what you were engaged in?

A Yes, sir.

Q Let me ask you, sir, when you talk about conversations concerning cocaine which took place between yourself and two other persons, namely Cordovano and Altamura, you indicated that this fellow Altamura said he might have some cocaine coming down through or from Canada; is that right?

A Yes, sir.

Q Well, is it a matter of fact when you spoke to Mr. -- these people in the restaurant that you indicated the first time you ever heard about it the fellow Altamura said not that there was cocaine but there was something?

A It was cocaine.

Q You of course recall being debriefed, I guess it wasn't debriefing but passing on information to - - by the way, was your name Thomas Harris?

A Yes.

Q It isn't Thomas Harris now?

A That was just in that particular file.

Q You don't use the name Stewart any more, do you?

A I prefer not to answer that question, sir.

Q You prefer not to answer that?

A Yes, sir.

THE COURT: Do you want me to direct him to answer?

MR. IANNUZZI: If the witness prefers not to answer I don't want to force him to be uncomfortable.

THE COURT: Have you been given another identity?

THE WITNESS: I have been, yes.

THE COURT: Is that with the Government's understanding and cooperation?

THE WITNESS: Yes, sir.

Q And as a matter of fact, sir, at the present time you indicate that you have -- you are still on probation; is that correct?

A Yes.

Q You have various conditions of probation that you have to fulfill?

A Yes.

Q Isn't that a fact?

A Yes, sir.

Q Is it also a fact, if you were to be charged with a violation of probation by your probation officer, if it were found to be true that you could go to jail?

A That is correct, sir.

Q You would go to jail for seven years?

A Yes, sir.

Q So that even now if your probation officer charged you with a violation of probation you could go to jail for seven years?

MR. PUCCIO: Objection.

THE COURT: I will allow it. Is that true?

THE WITNESS: Yes, sir.

Q One of the conditions of probation is that you cooperate with the United States Government?

A No, sir.

Q Isn't it part of your responsibility under the probation that if in fact there would be an investigation in which you were called in your candidness would be required?

A I don't believe that has anything to do with probation. I believe any citizen can be subpoenaed or asked to testify in a trial. I don't know anything as far as probation, no.

(continued next page)

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Q Very well. If you as an ordinary citizen, which you are now, were to be called in by the probation officer and told to go over to Mr. Puccio and cooperate with him and give him all the information --

MR. PUCCIO: I object to this as speculative.

THE COURT: Overruled. I suppose it is his state of mind. If probationary terms compel one to testify for the Government, then the jury ought to know it.

Q If you were to be asked to testify or to cooperate and you refused -- just refused -- do you feel that matter would be brought to the attention of your probation officer?

A I don't think they could do anything about it.

Q You don't think so?

A I don't think so.

Q Do you think you could refuse to testify in front of a Grand Jury?

A If I were subpoenaed, no. If someone walked up and asked me and I said no, it would be conversation.

Q If you were subpoenaed to this court, do you think you could refuse?

A No.

Q If you refused to do it, do you think that that could be brought to the attention of your probation officer?

A I would imagine so.

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Q You have had much opportunity to discuss these matters with your probation officer?

A No, sir, I have not.

Q You have had an opportunity to discuss it with the D.A.?

A Yes, sir.

Q Many times you have spoken with the agents?

A About what, sir?

Q Have you not spoken to the agents about your testimony and testimony in general?

MR. PUCCIO: May we fix a time on this?

THE COURT: I will allow it.

If you cannot answer, say so.

A I'm actually not sure. I have obviously spoken to agents about testimony -- about testimony that I have made, but I am not sure what you are referring to.

Q Just that you have testified in court on other occasions?

A Yes.

Q How many other occasions?

A One.

Q The Bynum case?

A Yes, sir.

Q And of course you testified in front of the

Grand Jury in the Bynum case?

A Yes, sir.

Q And you gave statements to the United States Government in the Bynum case?

A Yes.

Q Let me ask you, sir, do you recall giving a statement to the agents on January 8, 1971, concerning a conversation that you had in Pagano's Restaurant?

A I believe I gave them --

Q The question is, do you remember. Yes or no, sir.

A No, I do not because you say January 8 --

MR. IANNUZZI: If your Honor pleases, I would like the witness to answer questions and not tell me what I have said. If he cannot answer, I would be delighted to rephrase it.

MR. PUCCIO: No one is telling Mr. Iannuzzi what he said. I object.

MR. IANNUZZI: I asked the witness to answer the question and not give gratuitous remarks, so we can go forward.

MR. PUCCIO: I object to that.

THE COURT: Would you read back what the witness said.

(Testimony read.)

THE COURT: Is there a motion to strike?

MR. IANNUZZI: Yes.

THE COURT: Denied.

BY MR. IANNUZZI:

Q Do you remember being deprived on January 8, 1971, concerning a conversation in Pagano's Restaurant?

A No, sir.

Q And -- I will ask you --

MR. IANNUZZI: May I have this marked for identification or was this marked?

MR. PUCCIO: It already has.

MR. IANNUZZI: What is the number?

MR. PUCCIO: 3500-15.

Q I ask you, sir, to look at 3500-15. Without necessarily reading it, just determine whether or not on January 8, 1971, you were debriefed concerning Pagano's Restaurant?

A I believe it says January 5th, sir.

Q I am asking you whether this report is January 8th and I am asking you whether it has to do --

MR. PUCCIO: I object.

THE COURT: Objection sustained.

Q Whether you were debriefed on January 5th or January 8th --

MR. PUCCIO: I object.

MR. IANNUZZI: Withdrawn.

Q Do you remember being debriefed on January 5th?

A Yes, sir.

Q Was it about Pagano's Restaurant?

A Yes, sir.

Q Is it your testimony that at that time and in that place that you said to the agents -- withdrawn.

Did you tell the agents what the conversation was?

A Yes, sir.

Q And did you tell them exaclty as you remember it, as best as you can remember it?

A Yes.

Q And is it your testimony that in fact cocaine was the substance dealt with?

A I believe so, yes, sir.

Q You are not positive about it now?

A In my memory it was cocaine, yes, sir.

Q All right. Now I am going to ask you, sir, if you would be -- if you would look at paragraph 3, read that, to determine whether you said there was cocaine or just some stuff.

A It says here --

Q Don't say what it says. Just read it to refresh your recollection.

A Yes, sir. Here it says something --

Q Please don't say what it says again. Just read it to refresh your recollection.

A My memory is refreshed.

Q Thank you.

THE COURT: What is the question, Mr. Iannuzzi?

MR. IANNUZZI: I was just going back to the lectern and I would ask it, sir.

Q Does that indicate that --

THE COURT: Objection sustained.

Q Does that refresh your recollection --

MR. PUCCIO: That --

MR. IANNUZZI: Pardon me?

MR. PUCCIO: That question has been asked and answered.

THE COURT: Well, try it once more.

MR. IANNUZZI: I don't know if it was asked and answered when the man just read the document.

MR. PUCCIO: And he said it refreshed his recollection.

THE COURT: I ask the Jury to disregard the remarks of both counse. When they make those statements,

they are not making them at all, they are making them to you through me really.

If I were to excuse the Jury, the wouldn't even say it.

Go ahead, Mr. Iannuzzi.

BY MR. IANNUZZI:

Q Does that dlcument refresh your recollection that Mr. Altamura informed you that he might have something coming down from Canada?

A Yes, sir.

Q That's what was said?

A Yes, sir.

Q And does it refresh your recollection that it does not mention cocaine?

A Yes, sir.

Q When you spoke to the agents, you did not tell them cocaine, but something?

A Yes, sir.

Q And when you testified here in reference to cocaine, your memory having been refreshed, the mention of cocaine wasn't made to you by these people at that time?

A On January 4th, no, it was not, to the best of my meory.

Q When you said here today -- this morning on

January 4, 1974, that Altamura said he was expecting cocaine that was not an accurate recollection; is that correct?

A According to that report --

Q Excuse me, sir --

THE COURT: Mr. Stewart, the Jury is entitled to know what you recall.

THE WITNESS: I recall cocaine.

THE COURT: That's your answer?

THE WITNESS: Yes, sir.

Q Your recollection today is cocaine?

A Yes, sir.

Q All right. Was your recollection concerning this more fresh when you spoke to the agents three days after the conversation or today, four years after the conversation?

A Obviously it should have been more fresh at that time.

Q Would you find any objection to testifying that if you didn't say it then, that perhaps in fact it wasn't said --

MR. PUCCIO: Objection.

THE COURT: Objection sustained.

MR. IANNUZZI: Very well.

Q And at the time that you spoke to Altamura and Cordvano, it was talked about some trips that he made to

Canada; correct?

A Yes, sir.

Q Is it not a fact that you did not know for what purpose or nature these trips were made?

A No, sir.

Q So Altamura was making trips he didn't know in fact that they had anything to do with narcotics?

A I was told that they did. I didn't know it as a fact. I wasn't there.

Q As a matter of fact, you told the agents that you didn't know the exact nature for these trips?

A Not specifically. I knew it had to do with narcotics.

Q Did you tell the agents that?

A I believe so.

Q I will ask you to look at the documents again, 3500-15, on the third page, and I ask you if that refreshes your recollection as to what you told the agents.

(Shown to witness.)

THE COURT: The only question is does it refresh your recollection as to what you said to the agents?

THE WITNESS: Yes, sir.

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CROSS-EXAMINATION

BY MR. IANNUZZI: (Cont.)

Q And is it a fact that you said at that time that you didn't know the exact nature of the trips?

A The exact nature, no. I knew it had to do with narcotics.

Q Did you say that to the agents?

A I believe so.

Q I am going to ask you again to read this document, sir -- would you point out to me because I would like --

THE COURT: Objection sustained.

MR. IANNUZZI: Because I would like to know.

THE COURT: Objection sustained.

Q Would you point out in this document if it appears here that in fact you advised the agents that the trips had to do with narcotics?

MR. PUCCIO: Objection.

THE COURT: Objection sustained.

MR. IANNUZZI: Very well.

Q Is it a matter of fact that sometime there after you testified there was supposed to be -- in another conversation -- a transaction dealing with 24 kilos of cocaine?

A Yes, sir.

Q It wasn't a transaction of only nine kilos, was it?

A At that time it was supposed to be 24.

Q No question about that?

A No.

Q And by the way, sir, you did not know at that time a person named Vanacora, did you?

A No, sir.

Q Did you know a person named Oddo?

A No, sir.

Q Did you ever deal with them?

A No, sir.

Q Did you ever know that in fact they had anything to do with this cocaine?

A No, sir.

Q Let me ask you, did you ever hear of a person at the time involved in this particular cocaine transaction named Frank Cotroni?

A No, sir.

Q Did you ever hear of Frank Cotroni in your life concerning cocaine transactions?

A No, sir.

Q When I say before this case, I mean before you were asked to come here and testify.

Let me ask you --

THE COURT: Wait, wait, that was not a question.

MR. IANNUZZI: That wasn't a question, that was a modification of the first.

THE COURT: Then strike out the first and the answer. You can't modify a question without giving the witness an opportunity to modify the answer.

MR. IANNUZZI: That is perfectly fair, I assume.

THE COURT: THat is right.

BY MR. IANNUZZI:

Q Would you look over and see if you know this gentleman?

A No, sir.

Q Did you ever see him in your life?

A No, sir.

Q Did you ever have any transactions with him?

A No, sir.

Q Did you ever see the other gentleman in the blue suit?

A No,sir.

Q Did you ever have any transaction with him?

A No, sir.

Q Did you ever have any transaction in which Mr. Altamura indicated he went up to see a person named

Dasti?

A He never mentioned the name.

Q He never mentioned any names?

A No, sir.

Q The only thing that he mentioned was that there was narcotics coming from Canada?

A Exactly.

Q And the only thing that he mentioned was that it was a 24 kilo transaction coming from Canada?

A Supposedly 24 kilos coming from Canada or from the Canadian people.

Q All right.

That's all you knew about it; is that correct?

A Yes, sir.

Q That's all you know about it today as far as direct information from persons allegedly involved in the transaction?

A Well, after that 24 kilo number was given out that was approximately January 7th. When the stuff was delivered it was --

MR. IANNUZZI: I would object -- excuse me.

A All right.

Q I am sorry if I ask you confusing questions that require you to go on and on.

Q In reference to this transaction and supposedly these nine kilos of cocaine,that was supposedly part of the 24-kilo transaction; is that correct?

A Supposedly, yes, sir.

Q And Mr. Altamura never told you that he got these on the 10th of January, did he?

A Yes, sir.

Q He told you?

A I believe so.

Q Or was it that he told Mr. Cordvano and Mr. Cordvano told you,according to your testimony?

A On the morning of the 11th it was Mr. Cordvano that told me but I believe that Mr. Altamura sometime in the future had said it.

Q You mean afterwards?

A Afterwards, had told me that.

Q Would you have a date on that?

A Not to the best of my recollection, no.

Q In any event, Mr. Altamura indicated that he was dealing with Anthony Vanacora?

A Never mentioned the name.

Q Did he indicate that he had dealt with a Paul Oddo?

A Never mentioned the name.

Q Did he indicate that he dealt with a Frank Cotroni?

A No, sir.

Q Did he mention Frank Dasti?

A No, sir.

Q The only thing that you knew it came from Canada?

A Yes, sir.

Q Did he say it came from Montreal?

A No.

Q Did he say it came from Vancouver?

A No.

Q Did he say it came from British Columbia?

A No, sir.

Q It could have come from anyplace in the entire country of Canada?

A Yes, sir.

MR. PUCCIO: Objection.

I will withdraw the objection.

THE COURT: That is helpful all around.

Q Was the answer to that question, "Yes," sir?

A Would you repeat the question.

MR. IANNUZZI: May we have the question.

(Record read.)

A Yes, sir.

4 flws.

Q As far as you knew, it could have come from any person in Canada?

A Yes, sir.

Q Your information --

MR. IANNUZZI: I have no further questions.

THE COURT: Mr. Klar?

CROSS-EXAMINATION

BY MR. KLAR:

Q Mr. Stewart, on this January 5th conversation with Special Agents Moser and Handoga, you have indicated earlier that it was your impression that cocaine was being brought down from Canada; is that right?

A Yes, sir.

Q And in response to Mr. Iannuzzi's earlier question you stated to one or both of those agents that you did not know what the nature of Mr. Altamura's trips were in connection with his involvement in this matter; is that right?

A I did not know the specifics, I knew the general reason for it.

Q And you told that to the agents?

A I believe so.

MR. KLAR: Will the Government concede on Government's discovery material 3500-15, Page 3, that

the agent report that:

"Harris stated that he does not know the exact nature of these trips."

That is what appears in the report.

MR. PUCCIO: Your Honor, I think a concession at this point would be misleading, but to restrict it to that one particular report --

MR. KLAR: As to this portion, this particular sentence.

MR. PUCCIO: Can I see the report?

(Document shown to counsel.)

I will concede this one report dated January 8th, which concerns the January 5th debriefing of Mr. Stewart, the agent wrote 'Harris stated that he does not know the exact nature of these trips."

I will concede that.

Q Now, with respect to the meeting at Pagano's Restaurant, is it your testimony that Mr. Altamuro told you in the presence of Cordvano that he had something coming down from Canada?

A Yes, sir.

Q Did he mention to you at that time that this something was being brought directly down from Canada?

A His terminology, as best as I can remember, was

that there is something coming from Canada or from -- from Canada, whatever it was.

Q It is your impression that whatever this something was, was being delivered from Canada into New York?

A My impression was that it was coming from Canada.

Q Somewhere in Canada as opposed to somewhere from America --

MR. PUCCIO: Objection.

THE COURT: This witness can testify only to what was said. Sustained.

Q Did Mr. Altamura tell you something was coming from Chicago?

A No, sir.

Q Did he tell you it was coming from Mexico?

A No, sir.

Q Only told you it was coming down from Canada; is that right?

A Yes, sir.

Q Now, during that same conversation, did he discuss with you how much of this particular item was coming down from Canada?

A That night, no sir.

Q At a later time he did?

A Not with me. At a later time I found out from Mr. Cordvano.

Q That would be on January 11th?

A No, about January 7th.

Q Did you report that to Agent Moser or Handoga?

A Yes, sir.

MR. KLAR: I would ask if there is a report of a meeting of January 7th, I would ask that it be produced at this time.

THE WITNESS: I met with Moser.

THE COURT: Just a moment, please.

The exhibit number, please?

MR. PUCCIO: 3500-17.

Q So then on January 7th you had this conversation with Mr. Cordvano; is that right?

A Yes, sir.

Q In this conversation Mr. Cordvano tells you that 24 kilograms of cocaine that were going to be delivered?

A Yes, sir.

Q Did he tell you where these 24 kilograms of cocaine were coming from?

A He did not, no.

Q Did he speak to Mr. Altamura about this?

A Not at that time, no.

Q Anybody tell you if this 24 kilograms were being brought down or through Canada?

A Only from the night of the 4th that I knew this was the same cocaine that we were talking about.

Q You believed that the 24 kilograms that were being discussed on January 7th meeting was the cocaine that was referred to at the earlier meeting that was coming down or through Canada?

A Yes, sir.

Q No reference was made as to which portion of Canada the cocaine was coming from?

A No, sir.

Q You had no idea -- you had no idea where it was coming from in Canada?

A Actually, no.

Q Now, on January 11th you had a further meeting with Agents Handoga and Moser?

A Yes, sir.

Q This is at your residence?

A I believe so.

Q It wasn't in the courthouse somewhere or the agent's office?

A No, no, either at my residence or the vicinity.

Q Is this the same thing that you are receiving

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the $50 a day for?

A No sir, at that time I was not.

Q That began in July of 1971?

A Yes, sir.

Q But this is the same time that you are working as an informer for the Government?

A Yes, sir.

Q Now, at this January 11th meeting -- this is the meeting where you advised the agents that the five kilograms were brought into the Garnett home by --

A Yes, sir.

Q -- by Cordvano?

A Yes, sir.

Q This is the same five kilograms that related to the 24 kilograms that were brought down; is that right?

A Yes, sir.

Q You also said that you had -- withdrawn.

I think you also mentioned that four kilograms were in the possession of Vincent Altamura; is that right?

A Yes, sir.

Q Did you tell to agents Handoga and Moser?

A I believe so, yes.

Q I ask you to look at these two reports, one is 3500-17 and the other of Agent Moser which I do not have the

identification number, and I ask you to look at these and tell me where such a reference appears.

MR. PUCCIO: I object.

THE COURT: Objection sustained.

Q I ask you to take a look at these and I ask if they refresh your recollection as to whether or not reference was made to you by either of the agents of four kilograms.

MR. PUCCIO: I object.

THE COURT: Objection sustained.

Now, these reports, the jury must understand are not reports signed by this witness. They are reports of Special Agents of the Bureau of Drug Enforcement Administration of interviews and debriefings with this witness, reporting what he said.

MR. KLAR: Will the Government concede in discovery material 3500-17 --

THE COURT: The jury may be excused. We had better set the rules down for this.

(Jury leaves courtroom.)

THE COURT: There is one way that I know of that you can get the contents of this report to evidence, when a witness says "No, I didn't say it" or "I did say it and it is not in the report" and that

is to bring the agent down. If the Government wants to make certain concessions, it is the Government's determination.

MR. KLAR: That was going to be my next question.

THE COURT: If you want to ask the Government for a concession, go into the corner and ask them if they want to concede. If they do not want to concede the alternative is to bring the agent down and let him tell you why he didn't put it in, if in fact he did say it.

MR. KLAR: May I have a moment to speak to Mr. Puccio at this time?

(Pause.)

MR. PUCCIO: Your Honor, this is ridiculous. In one of the reports it says relative to the pending transaction involving the 24 kilograms:

"Harris informed the agents that Altamura obtained nine kilograms of cocaine some time before January 10th and delivered five kilograms directed vehicle to Cordvano."

THE COURT: Let me be more specific:

You say to the witness:

"Did you make this statement or did you say

substantially this to the agent" and then read it.

MR. KLAR: Very well.

THE COURT: If the witness says he did not say it, then bring the agent in and ask the agent to tell the jury that he did say it or explain why he put it into that language.

MR. PUCCIO: The agent is right outside. He will be the next witness.

THE COURT: Fine, that's the only answer to all this.

MR. IANNUZZI: Judge, I am sorry, but I was going to ask if we could have two minutes?

THE COURT: It is very easy cross-examination. You get everything this witness says happened and then you read the report and then you say it's not in the report. So what if it is not in the report. Let the agents describe why it is in the report, or not in the report, if you want to call the agent.

(Recess taken.)

MR. KLAR: May I continue, your Honor?

THE COURT: Please do.

Q This $50 a day that you were receiving from the Government, is that cash or check?

A I believe it was usually in the form of a check.

Q Did you pay taxes on that?

A No, sir.

Q Did you report the $5,000 on your income tax return?

A No, sir.

Q You testified earlier that there came a time that you saw the five kilograms of cocaine at the Garnet house; is that right?

A Yes, sir.

Q These were packed in ten one-half kilo bags.

A Yes, sir.

Q You observed among other things a brownish color; is that right?

A Yes, sir.

Q To use your words, a sticky persistency?

A Consistency.

Q And it was gummy, is that right?

A Yes, sir.

Q Now, there came a time when you took a sample of this cocaine and you gave it to Agent Handoga; is that right?

A Yes, sir.

Q Would that be on or about January 11th?

A Yes, sir.

Q And during that meeting with Agent Handoga, did you point out to him that the sample was brownish in color and had a sticky consistency and was gummy.

A I don't know if I actually said that, but it was obvious, as to the color.

Q Was it obvious to a stick consistency?

A If you touch it, yes.

Q That it was gummy?

A If you touch it, yes.

Q And Agent Handoga took this small sample with him?

A Yes.

Q Now, do you recall appearing, testifying in the Bynum case?

A Yes, sir.

Q Excuse me, withdrawn. This is the Grand Jury on October 5th, 1971.

A Yes.

Q Do you recall being asked as to the nature of the substance of the sample?

A I don't actually remember at this time, no.

THE COURT: Will you supply the exhibit number, Mr. Clerk, --

MR. PUCCIO: It was 3500-11, your Honor.

THE CLERK: Three-page exhibit.

MR. KLAR: May I have one moment, your Honor?

Q Do you remember being asked the following question:

"Question: What was the first sample? How did it appear physically?"

I don't actually remember it, but I'm sure it was in there. I don't exactly remember it.

Q You answered, "That it was mostly brownish powder."

A If that's what it says.

Q But you didn't state at that time if you can recall anything about a sticky consistency, the fact that the substance was gummy.

A I'm -- honestly I don't remember that. I haven't seen that in four years.

Q You certainly would have remembered four years ago that the substance was sticky and gummy.

A It definitely was. I don't know whether I said it or not.

Q If you didn't say it, because you had forgotten what the substance looked like --

THE COURT: Objection sustained.

Q Now, you testified earlier that you took this one sample and you gave it to the agents, is that correct?

A Yes, sir.

Q Wasn't it in fact -- wasn't there in fact a second sample?

A Yes.

Q When did you take this second sample?

A I believe it was approximately January 17th or 18th.

Q January 17th?

A I believe so, approximately, sir.

Q Did you mention this to Agent Handoga or Agent Moser?

A That I took the sample?

Q Yes.

A Definitely.

Q Do you recall what time, what place that you indicated that you took that second sample?

A It was in an apartment on Northern Boulevard

that belonged to Mr. Cordvano's mother. It was in the evening and I took it from one of the bags.

Q Where were you when you gave this second sample to one of the agents?

A I don't remember exactly where I gave it to him. Probably the next time we met at my apartment. There was a bar and grill also that we used to meet at.

Q Do you remember what the substance of the second sample was?

A It was one of the large chunks of the cocaine. There were a few rock-like or lumps of it and I took part of one of those.

Q This would be a rock-like substance as opposed to a sugary substance?

A There were a few chunks in with all the powder and I took one of these chunks.

Q Were these chunks brown in color?

A On the outside, but when you broke them the inside was still white.

Q Did you observe a brown color on the rock hard substance?

A On the outside. I tried to take the whiter and purer stuff at that point.

Q You definitely did report the second sample

to the agents?

A Yes, sir.

Q This second sample also came from five kilos of cocaine?

A Yes, sir.

Q That came from the 24 kilos that were being brought down from Canada; is that right?

A Well, I think only nine arrived.

Q But it was from the 24 kilos transaction that you were advised of?

A The same conversation, yes.

Q Have you ever listened to any tape recordings relative to any transactions of cocaine?

A Yes, sir.

Q Where did you listen to these tape recordings?

A Southern District of New York.

Q Were they relative to cocaine transactions that we're referring to here?

A I don't remember specifically. They could have been. They were relevant to cocaine, heroin and drug transactions. There were quite a few of them.

Q Just pinpoint the time for me. When would this be?

A Before the Bynum trial in 1972.

Q And in these transcripts did you hear a conversation relative to cocaine?

A I believe so, yes.

Q Did you hear a discussion about the substance and condition of the cocaine?

A I wouldn't remember as to whether it was on the tape at this point, no.

Q Do you recallif there was any discussion about the cocaine being brownish and spotty, rocky as opposed to gummy?

A I don't actually remember that any tapes contained this particular cocaine on them, because this would be before we actually did any taping. I don't think there are any tapes of this.

Q Well, in the Bynum case were there any conversations on those tapes that referred to the substance of the cocaine in that case?

A To this cocaine, I don't believe so.

Q You never -- withdrawn.

Would you consider the cocaine that you saw, the first time, this five kilos to be of good quality?

A No, sir.

Q Would you consider it to be poor quality?

A I would consider the cocaine in general to be

poor quality except for these few rocks which hadn't been broken up?

A They were of good quality, but in general a package to see it was poor quality.

Q Now, in your experience as one who admittedly dealt in narcotics, isn't it a fact you have numerous transactions going on at the same time, and you may be buying from four or five or ten people at the same time?

A No, that wasn't the case. Not my case, no.

Q From your experience, doesn't that often occur, that numerous transactions are going on all around?

A In my personal experience, no.

Q You dealt -- you have dealt with others who deal in narcotics, isn't that right?

A Yes, sir.

Q Are you aware from speaking with them, these other people, that they are often looking for transactions where they can buy and sell different types of narcotics?

A I'm sure they are. I personally never bought from anyone but one place.

Q And you never bought from Frank Dasti?

A No, sir.

Q You never heard of Frank Dasti before?

A No, sir.

Q When was the first time you heard his name mentioned?

A I have heard his name mentioned in the past, yes.

Q Who mentioned it to you?

A I believe agents or listened to a conversation, I may have heard the name.

Q Out on the street have you ever heard of Frank Dasti?

A No, sir.

Q Mr. Altamura never told you that Frank Dasti deals in cocaine?

A No, sir, he never said that.

Q Mr. Cordvano never said that he deals with Frank Dasti?

A No, sir.

Q You said you listened to conversations. Then is that what you said a few minutes ago?

A I have heard Mr. Dasti's name. The name is not unfamiliar. I can't tell you exactly where.

Q You don't mean tape conversations, do you?

A No.

Q You mean conversations with agents --

A I have known the name. It's not an unfamiliar name.

MR. KLAR: I have no further questions.

THE COURT: Do you have anything, Mr. Puccio?

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q You mentioned, Mr. Stewart, that there was a conversation that you had with Mr. Cordvano about 24 kilograms of cocaine; is that correct?

A Yes, sir.

Q To your knowledge was 24 kilograms ever delivered?

A No, sir, it was nine.

Q It was nine?

A Yes, sir.

Q Now, you indicated that you have listened to some tape recordings; is that correct?

A Yes, sir.

Q That was in connection with the Bynum case in the Southern District of New York; is that correct?

A Yes, sir.

Q And these were tape recordings, as you indicated, made after the five kilogram delivery of Mr. Cordvano.

A Yes.

Q By Mr. Altamura which in turn was delivered in

your presence to Bynum?

A Yes, sir.

Q Have you ever heard Mr. Dasti's voice on tape?

A No, sir.

Q Or Mr. Cotroni's?

A No, sir.

Q Or Mr. Oddo?

A No, sir.

Q Or Mr. Vanacora's?

A No, sir.

Q So you haven't listened to the tape recordings involved in this case; is that correct?

A Yes, sir, that's correct.

Q Did anyone advise you that you had to pay taxes on the money you received from the Government?

A As far as I was understanding it was a per diem and subsistence thing that was not subject to taxes.

Q Did anybody ever tell you to pay taxes on the $5,000 that you received from the Government?

A No, sir.

Q Now, when for the first time, Mr. Stewart, did you speak to me concerning this case, approximately?

A I believe it was a third Saturday, the third Saturday of November.

Q And you indicated, of course, that you were sentenced prior to that; is that correct?

A Oh, yes.

Q You were -- your sentence again was --

A I was sentenced in September of 1972.

Q And at that time you received a probationary sentence; in other words, you weren't sent to jail.

A That's correct, sir.

MR. PUCCIO: I have no other questions, your Honor.

RECROSS EXAMINATION

BY MR. IANUZZI:

Q Mr. Stewart, who told you that you didn't have to pay taxes?

A I wasn't told one way or the other on the $5,000. On the $50 a day, I was under the understanding that that was per diem.

Q The question is, sir, if you could restrict yourself to it, is who told you?

A Told me what?

Q That you didn't have to pay taxes or the money.

A I don't remember it ever being told to me.

Q Did you ever check whether you ever had to?

A No.

Q You just didn't bother paying the taxes?

A I didn't check.

MR. PUCCIO: Will your Honor take judicial notice on that per diem --

MR. IANUZZI: Judicial notice of what?

THE COURT: You will have to submit something on it and maybe I will charge on it.

Q During the period of time after your indictment were you living at home after the second indictment, your second arrest?

A During the second arrest, during the second arrest?

A Yes.

Q And after you were getting the $50 a day?

A No.

Q Were you -- where were you living at?

MR. PUCCIO: I object, your Honor.

THE COURT: Was it at a place selected by the Government?

THE WITNESS: I selected the place, but it was not in my own home.

Q Was it in a place that could be considered --

THE COURT: Objection sustained.

MR. IANUZZI: Pardon me?

THE COURT: Objection sustained.

MR. IANUZZI: I don't want to know the actual location --

THE COURT: Were you in protective custody?

THE WITNESS: There wasn't anyone there, no, sir, I was just off in a different place.

THE COURT: Were you moved about?

THE WITNESS: Yes, sir.

THE COURT: Were you advised -- did you advise the Government each time you moved?

THE WITNESS: I was in constant contact with them.

MR. IANUZZI: I have no further questions.

THE COURT: Anything further?

MR. KLAR: Nothing further.

THE COURT: You may step down, thank you.

MR. PUCCIO: We call Mr. Richard Moser to the stand, your Honor.

XXXX R I C H A R D L. M O Z E R, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Moser, by whom are you employed?

A Drug Enforcement Administration.

Q You were also employed by the predecessor agency of the Drug Enforcement Administration and that is the Bureau of Narcotics & Dangerous Drugs?

A Yes, sir.

Q For how long a period of time have you worked for both those agencies?

A Prior to being in BEDD I was with the FBI.

Q Which was the predecessor agency of the Bureau of Narcotics & Dangerous Drugs.

A Yes, and I started in July of 1967.

Q You have been employed as a Federal Agent investigating narcotics since 1967?

A Yes, sir.

Q Are you familiar with a gentleman named George STewart?

A Yes, sir.

Q And you also are aware, are you not, that Mr. Stewart was given the code name of James Harris?

A Initially he was given that name.

Q And you also are aware, are you not, that Mr. Stewart was used by the Government as an undercover operator for a period of time?

A Yes, sir.

Q Are you familiar with Mr. Stewart's activities for the Government?

A Completely.

Q You and Agent Handoga were assigned to that investigation.

A That's right.

Q Now, let me direct your attention to January 11th of 1971, did you and Agent Handoga meet with Mr. Stewart on January 11th, 1971?

A Yes, we did.

Q And did you receive something from him on that day?

A On that day I received a small quantity of cocaine.

Q And can you tell us what you in turn did with the quantity of cocaine you received from Mr. Stewart?

A I brought it back to our office, and I processed it according to our regulations and I turned it over to the United STates Chemist at 90 Church STreet.

Q Did you and Mr. Handoga again meet with Mr. Stewart on January 19th, 1971?

A Yes, we did.

Q And did you on this day again receive a sample of cocaine from Mr. Stewart?

A Yes.

Q And what did you in turn do with the cocaine received on that day?

A I followed the same procedure as I had done with the previous sample, that is I waited, put it in a lock-sealed envelope and turned it over to the United States Chemist.

MR. PUCCIO: No questions, your Honor.

THE COURT: Mr. Ianuzzi?

MR. IANUZZI: May I have a moment. We just received another document and I would like to have just a moment to read it, sir.

THE CLERK: Two-page document marked Government's Exhibit 3500-22.

(So marked.)

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CROSS EXAMINATION

BY MR. IANUZZI:

Q Mr. Moser, these samples which you received you say from Mr. Stewart, did Mr. Stewart indicate to you that these were -- withdrawn.

You had previously discussed before January 11th, 1971 with Mr. Harris a pending transaction of 24 kilos of cocaine; is that correct?

A That's correct, sir.

Q And that the cocaine was to -- withdrwan.

These 24 kilos of cocaine were part of the transaction in which this fellow Altamura was involved, is that correct?

A That's correct.

Q As a matter of fact, Altamura, according to harris, was supposed to be the delivery man.

A That's correct.

Q As a matter of fact was it not that Altamura was going to drive to Canada and drive him back?

A That I don't recall, sir.

Q As a matter of fact, sir, were you not advised by Harris that Altamura would be the delivery man on the 24 kilos of cocaine?

MR. PUCCIO: Asked and answered. I object.

THE COURT: I will allow it.

THE WITNESS: Yes.

Q The answer is yes?

A Yes.

Q All right. Now, was it also a fact that Mr. Harris indicated that he did not know who the people were with whom Altamura was dealing?

A Mr. Harris did not know who the people were, that's correct.

Q And the two samples that were given to you by Mr. Harris, one was powdered cocaine or powdered substance?

A It was cocaine, it was in powder form.

Q And the second one was in a crystalline or rock-like form?

A That's correct.

Q Neither of those samples were gummy?

A The first one, I didn't actually feel it. The first sample was brownish. It was a speckled type cocaine, brown, not the normal type of cocaine.

Q But it was brown powder?

A Yes.

Q The second one was rock-like; that is to say like a lump of sugar-like you get sometimes in sugar?

A That's right.

Q It wasn't gummy, it was hard?

A That's correct.

Q Those were the only two samples he gave you?

A That's correct.

MR. IANUZZI: I have no further questions. Thank you, sir.

THE COURT: Any questions, Mr. Klar?

MR. KLAR: I have no questions.

THE COURT: Anything further, Mr. Puccio?

MR. PUCCIO: Nothing further.

We call Mr. Blossoff?

MR. IANUZZI: May we have a moment, sir?

THE COURT: Certainly.

MR. IANUZZI: Thank you, your Honor.

(A short recess was taken.)

(Continued on the next page.

S T A N L E Y B L A S O F, a witness called on behalf of the United States of America, was sworn by the Clerk of the Court, and testified as follows:

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Blasof, by whom are you employed?

A I am a forensic chemist with the Drug Enforcement Administration, New York Laboratories.

Q How long have you been so employed?

A Over ten years.

Q What are your official duties with the Drug Enforcement Administration and its predecessor?

MR. IANNUZZI: Sir, we concede the witness' qualifications.

MR. PUCCIO: All right.

Q Now, Mr. Blasof, did you analyze a sample of cocaine or suspected cocaine that was turned over to the United States chemist and given No. 2843 or alternatively Exhibit 1?

A (No response.)

Q That would be turned over by Agent Moser on January 12, 1971.

A Yes.

Q You subjected that sample to an analysis, is

that correct?

A Yes.

Q Would you tell us -- did you weigh the sample?

A Yes.

Q What was the weight?

A .44 grams.

Q That would be the net weight?

A Net weight.

Q What was the gross weight?

A I would have to see the laboratory report.

MR. PUCCIO: May I have this marked?

(Document marked Government's Exhibit 46 for identification.)

Q I show you Government's Exhibit 46 and ask you if it refreshes your recollection as to the gross weight ofthe sample given to you by Agent Moser on the 12th of January, 1971?

A Yes. The gross weight was 2.26 grams.

Q Now, what were the results of your -- I take it you examined the sample and came to some conclusion as to the substance, is that correct?

A Yes.

Q What were the results of your analysis?

A I found the sample to contain cocaine.

Q Did it contain anything else?

A Yes, it contained a small amount of procaine and sugar.

Q The cocaine had been cut with an adulterant?

A Yes.

Q Later on that same month, on January 20, 1971, were you given an additional sample in connection with this case? Or was the United States Chemist given an additional sample by Agent Moser?

A Yes, sir.

Q Was that sample denominated Exhibit 2 or No. 2870 in your laboratory? XXX

A Yes, sir.

Q This again was a sample of suspected cocaine, is that right?

A Yes, sir.

Q Did you subject this sample to an analysis and did you come to a conclusion about this sample?

A Yes.

Q You were able to determine through your analysis what the substance actually was?

A Yes.

Q What was it?

A Cocaine.

Q Cocaine hydrochloride?

A Yes. The sample weighed .30 grams of which 97.2 per cent was cocaine hydrochloride.

Q So that the sample you received I guess one can say was 97.2 per cent pure cocaine?

A Yes.

MR. PUCCIO: No other questions.

May I have this other lab report marked?

THE CLERK: So marked Government's Exhibit 47 for identification.

(Lab report marked Government's Exhibit 47 for identification.)

CROSS-EXAMINATION

BY MR. IANNUZZI:

MR. IANNUZZI: May I just have a second, sir?

(Pause.)

Q Sir, your function is merely to analyze the sample or samples that you are given in the laboratory, is that correct?

A Analyze the sample and testify in court as far as my findings.

Q All right. Do you, other than the report that you filed, remember these particular samples?

A (No response.)

Q In other words, do you have an independent recollection of the two samples you tested back in 1971?

A I have my work sheet from which the information on the laboratory report would be derived.

Q Do you have that work sheet with you, sir?

A Yes.

Q May I see that, please?

A Yes.

MR. IANNUZZI: Should we have these marked, sir?

THE CLERK: Two documents marked Government's Exhibit 48 for identification.

(Two work sheets marked Government's Exhibit 48 for identification.)

xxx

MR. IANNUZZI: Thank you, sir.

Q And, sir, the sample that you received, the second one, sir, by the way, is there a way of telling or determining from cocaine where it was grown or anything to that effect? Does it indicate where it came from?

A I am not in a position to say where it came from.

Q Is there a way of doing that, though, by analysis of the cocaine that certain cocaine comes from different parts of the world and has different strains in it?

A I don't believe so.

Q Because it is already processed and impossible to tell at that point, is that it? Or is it just not possible to tell?

A It's possible to tell if two samples are similar but not where it came from.

Q In this case, sir, the samples were not similar, were they?

A They both contained cocaine.

Q But there were not similar, were they?

A It depends on what you mean by similar.

Q Well --

A Similar in origin?

Q I mean similar in appearance even.

A Appearance, no, they weren't similar in appearance.

Q As a matter of fact, the sample that you received the second time was white?

A The second sample was white.

Q It wasn't in a rock form or anything, it was loose crystals, wasn't it?

A It was a powder.

Q So the second sample was a white powder?

A That's how cocaine normally is.

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Q Just like any other cocaine, correct?

A Yes.

Q The other sample was not white, it was tan?

A It was tan.

Q That was not similar to the second sample, correct?

A If you mean in color, no.

Q Yes.

A No.

Q Is that right?

A One was tan and one was white.

Q By the way, neither one of them was in a sticky or gummy form, were they?

A I don't recall.

Q You would have noted that down?

A No.

Q No, you would not?

A No, they were not gummy.

Q The first sample that you received, the one you said was tan and different from the white, the white was the pure sample; correct?

A (No response.)

Q More pure, 97.2?

A Practically pure.

Q The other, the one that was tan, that was adulterated?

A It had some adulteration but it was pretty pure.

Q It had sugar in it and it had procaine in it?

A A small amount of each.

Q Do you know whether in its original form it was white like the other sample?

A I only know the color at the time I opened the package.

Q Could you say with any degree of chemical certitude that the original was brown or is itthat you can't tell after it was adulterated?

A I have seen samples of cocaine that was white at ten p.m. and tan at eight a.m. the following morning.

Q Would you suggest this happens to cocaine often, that it turns brown?

A I have seen many samples.

Q It happens very often?

A I wouldn't say very often, but it happens.

Q It is not unusual from a chemical point of view? It is not a once in a lifetime type of situation?

A It depends on what the adulterants are.

Q You've seen it more than five times?

A Seen tan cocaine?

Q Sure.

A Yes, I've seen tan cocaine more than five times.

Q More than ten times?

A Yes.

Q And is it that cocaine might have a tendency to just discolor or is it as a result of an adulterant that it changes color?

A I've seen it change color.

Q Without adulterants?

A No, usually when there are adulterants.

Q So it is the adulterants that would change the color of the cocaine? xxx

A I don't really know; I presume so.

Q Okay. And the cocaine in this situation that did not contain the adulterant, it did not change color?

A At the time I analyzed it, it was white.

Q You wouldn't think it had been tan and turned white, would you?

A First it was tan and then white?

Q Yes.

A No, I wouldn't think so.

Q If you were to get, sir, a chemical substance which came from the same place at the same time, would you

anticipate they would react the same to the same stimuli?

A If they were the same material?

Q Yes.

A If they were the same material they would be identical.

MR. IANNUZZI: No further questions.

THE COURT: Any questions, Mr. Klar?

MR. KLAR: Any questions, Mr. Puccio?

MR. PUCCIO: I have a few questions, your Honor.

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Blasof, do you specifically remember or can you today visualize each one of these samples, both Exhibit 1 and Exhibit 2 that you analyzed in 1971?

A No.

Q Are you prepared to say for certain today that Exhibit 1 was in no way gummy or sticky?

MR. IANNUZZI: Is the Government impeaching the credibility of its own witness?

THE COURT: Do you have an objection?

MR. IANNUZZI: Yes.

THE COURT: What is the basis of your objection?

MR. IANNUZZI: That the --

THE COURT: Objection overruled.

MR. IANNUZZI: Can I get it on the record?

THE COURT: Objection overruled. Put it on the record at length later.

MR. IANNUZZI: There is no length to it.

THE COURT: Wait until I excuse the jury.

MR. IANNUZZI: Very well.

A I don't have any independent recollection. I can't recollect independently. I only have my report that I am going on.

Q You noted in your report that the first sample was tan powder and the second sample was white powder, is that correct?

A In my opinion, yes.

Q Now, during the course of your career with the Bureau of Narcotics or for that matter during the course of your career as a chemist or analyst, have you had occasion to examine large substances of cocaine, kilo quantities or half kilo quantities?

A Yes.

Q Have you ever observed large quantities of cocaine, let's say kilo quantities or half kilo quantities that have had a -- that have been half tan and half white?

MR. IANNUZZI: I object to other cocaine some place in the world at some other time. I think we should restrict it to this cocaine.

THE COURT: Overruled; I will allow it.

A I have seen samples where you had pieces of pure cocaine surrounded by other material which was a mixture of cocaine and dilutants.

THE COURT: We are going to have to suspend, Mr. Puccio.

The case will continue promptly at two o'clock.

(The jury left the courtroom.)

THE COURT: Now, Mr. Iannuzzi --

MR. IANNUZZI: Yes, sir.

THE COURT: I have one hour for lunch. Between one and one-thirty I am having my lunch. from 1:30 to 1:55 I have a meeting in my chambers with the Circuit Executive. And five minutes to one I have to come back on another matter for sentence.

You tell me in two minutes how the Government's question was impeaching its own witness. Let's assume it had no right to do [illegible]. Now, in two minutes.

MR. IANNUZZI: In my opinion he was doing that, sir.

THE COURT: That is it?

MR. IANNUZZI: That is it.

THE COURT: I thought you had more to say.

MR. IANNUZZI: No, sir. You just didn't give me a chance to say it.

(A recess was taken until 2:00 p.m.)

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AFTERNOON SESSION

THE COURT: Mr. Klar, will you tell your associate, Mr. Iannuzzi, who is not yet in the courtroom, that Mr. Gordon Trowley, the credit manager of the Waldorf-Astoria Hotel, called and said that he was served with a subpoena yesterday at 3:20 directing that he produce certain records here at two o'clock and he said that he does not have enough time.

MR. POLAKOF: I think it has been resolved.

THE COURT: What shall we tell Mr. Gordon Trowley?

MR. POLAKOF: I think Mr. Iannuzzi has just spoken to him.

THE COURT: All right, seat the jury.

(Jury present.)

THE COURT: Mr. Blasof, would you please resume.

STANLEY BLASOF, called as a witness, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. PUCCIO (continued):

Q One additional question for you, Mr. Blasof.

Have you ever examined a sample of cocaine which has different parts with different consistencies?

MR. IANNUZZI: Objection, this has already been asked and answered.

THE COURT: Overruled.

A Yes.

Q You are saying that in one given piece, or sample, of cocaine, there is not necessarily the same consistency throughout?

MR. KLAR: Objection as to form.

THE COURT: Overruled. I will allow it.

A That is correct.

MR. PUCCIO: No further questions.

THE COURT: How many samples of cocaine have you examined in your lifetime?

THE WITNESS: Several thousand.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Sir, in this case however, do you have any independent recollection -- withdrawn.

You never saw the particular -- any more cocaine than was in these two samples in this particular situation; is that correct?

A I don't understand.

Q You did not see anything more than the two samples that you analyzed; is that correct?

THE COURT: You did not see the package from which the samples were withdrawn?

THE WITNESS: No.

THE COURT: You just saw the .44 grams or the 2. --

THE WITNESS: Plus the wrapper it was submitted in.

BY MR. IANNUZZI:

Q Yes, but the wrappers were paper or plastic?

A Plastic and aluminum foil.

Q However, you having seen only the samples that you analyzed, cannot testify that in fact this came from a portion of an amount of cocaine which some parts were one and some parts were another, can you?

A No.

Q And all you can testify, however, is that the pure cocaine or that which had not been adulterated, was pure white, correct?

A It was white.

Q Yes, all right.

Had it been less than -- had it been less than the usual color or appearance of cocaine, you would have noted down, would you not, its appearance?

A I don't quite understand.

Q If it had been unusual -- had an unusual appearance, you would have noted it down, would you not have?

A If it was a different color, I would have noted it.

MR. IANNUZZI: All right, I have no further questions. Thank you.

THE COURT: Mr. Klar?

MR. KLAR: No further questions.

THE COURT: Next witness, please.

MR. PUCCIO: Mr. Maurice Barral.

M A U R I C E B A R R A L , called as a witness, having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: State your full name and spell it, please.

THE WITNESS: Maurice Barral, B-a-r-r-a-l.

THE CLERK: Be seated, please.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Barral, by whom are you employed?

A I am employed by the Quebec Police Force.

Q For how many years have you been so employed?

A Twenty-seven years.

Q What is your present title or rank in the Quebec Police Force?

A My rank is inspector, my title -- I command the Mauricie district in the province of Quebec.

Q Mr. Barral, I would like to direct your attention to March the 17th, 1971.

On that date, were you on duty as a member of the Quebec Police Force?

MR. KLAR: I am going to object to any testimony at this point as beyond the date of the conspiracy, I believe.

THE COURT: The conspiracy is said to have terminated on or about April 30th, 1971.

MR. KLAR: I am sorry. I thought it was March 1st.

THE WITNESS: May I answer?

THE COURT: Surely.

A At that time, I was in charge of the Morality Squad in Montreal.

Q Now, you had several people under your command at that time; is that correct?

A That's correct.

Q On that date, Mr. Barral, was the defendant, Frank Dasti, arrested and brought to your office in Montreal?

A That's correct, sir.

Q And do you see Mr. Dasti sitting in the courtroom today?

A Yes, sir.

Q Will you point him out, please?

A He's the one in the dark blue suit with the red and blue tie.

THE COURT: Let the record show that the witness pointed out the defendant Frank Dasti.

Q Now, was Mr. Dasti -- once he was in your office -- directed to do anything by you?

A Yes, first of all -- at that day I had raided the Victoria Sporting Club and there were forty-nine people arrested --

Q And this was --

A -- including -- Beg your pardon?

Q Continue, please.

A -- including Mr. Dasti.

Q And this raid was in connection with gambling; is that correct?

A With gambling. It was an illegal gambling house.

Q Now, when Mr. Dasti was in your office, you directed him to do something, did you not?

A Yes, I asked him -- first of all, he has been brought to my office and in front of me I asked him to empty his pockets.

Q All right, did he do that?

A He did.

Q Did he take anything out of his pockets?

A Everything that he had and I searched his pockets myself, wallet, papers, money and so on.

Q There were certain papers which Mr. Dasti took out of his pocket; is that right?

A Yes.

Q And were they placed on your desk by Mr. Dasti?

A They were placed on my desk, that's correct.

Q And what was done with respect to the papers after they were placed on your desk?

A I examined the papers, of course, during when he was emptying his pockets and I put all that he had in a brown envelope.

Q And did you do anything --

MR. PUCCIO: May I have this marked, your Honor?

THE COURT: Let it be marked.

THE CLERK: Numerous documents marked Government's Exhibit 49 for identification.

MR. PUCCIO: Thank you.

Q Now, first look at the envelope, Mr. Barral. Is that the envelope that the documents were put in?

A Yes, it is.

Q After the documents were put in an envelope, did you have anything done or did you personally do anything with respect to the documents?

A I give this envelope to my secretary.

Q Did you give her any instructions?

A I order her to photostat -- Xerox -- to make Xerox copies of everything that the envelope was containing.

Q So she took the envelope with the original documents of Mr. Dasti; is that correct?

A Yes.

Q Did there come a time when she returned to your office and gave you the original documents back and the Xerox copies?

A Twenty minutes later -- approximately twenty minutes later.

Q Did you compare the originals documents to the Xeroxed papers?

A I did.

Q And were they identical?

A They were.

Q Now, will you direct your attention to the items that you have taken out of that envelope -- will you examine them, please.

A Yes, these are -- like the first one is a letter addressed to Mr. Frank Dasti.

Q You flip through the documents and see if they were the ones that you asked -- withdrawn.

Those are the Xerox copies? What you have in front of you are the Xerox copies that your secretary made?

A They are, sir.

Q Now, let me ask you this:

What did you do,if anything, with the original documents that Mr. Dasti had put on your desk?

A After Mr. Dasti left my office and after that I had the originals and the copies. I studied all the documents.

Q Well, let me ask you this:

You say that you asked Mr. Dasti to empty his pockets and you obtained certain documents from him and you asked your secretary to make certain copies of those documents?

A Correct.

Q When she returned, she gave you the originals and gave you Xerox copies?

A Yes.

Q What did you do with the original documents that you had taken from Mr. Dasti?

A I kept them for -- he was arrested in the afternoon of the 17th of March, 1971 and he has been released the morning after.

Q All right.

A So I give back everything -- everything that he had in his pockets I give him back.

Q The originals were returned to Mr. Dasti?

A That's correct, sir.

Q So you retained the copies; is that correct?

A I did so.

Q Now, I ask you to look at the papers in front of you and I ask you to tell us if those are the papers -- the copies of the documents that you retained?

A They are, sir.

MR. PUCCIO: Your Honor, I would like this document separately marked, please?

THE COURT: Give it another marking.

THE CLERK: One-page document marked Government's Exhibit 49A for identification.

MR. PUCCIO: I offer Government's Exhibit 49A into evidence.

THE COURT: Let me see it?

(Document shown to Court.)

MR. PUCCIO: Your Honor, I am referring to a specific document at the bottom. There are two documents on the sheet.

THE COURT: You are referring only to 23A?

MR. PUCCIO: There are two documents. I am referring to the bottom line, yes.

THE COURT: Show it to counsel, please.

(Document shown to counsel.)

THE COURT: If you have any additional objection at this time --

MR. IANNUZZI: If your Honor pleases, no, except that perhaps the 49A and the 23A -- maybe we can cut it in half?

THE COURT: Cut the exhibit from the balance of the page. Let it be marked.

The exhibit is now known as 23A in evidence. 49A is for identification. It remains for identification.

MR. PUCCIO: May I circulate it?

THE COURT: 23A.

MR. PUCCIO: May I circulate the exhibit?

THE COURT: Yes.

(Document shown to the jury.)

MR. PUCCIO: No further questions.

THE COURT: You may inquire, Mr. Iannuzzi?

MR. IANNUZZI: Yes, your Honor.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Inspector Barral, in reference to this arrest that was made on March 17, 1971, Mr. Frank Cotroni was not arrested, was he?

A No, sir.

Q There is no claim that he was at or near that gambling house on that day, is there?

A Not that I know of.

Q And this document that has been marked, I believe 23A, does that have a date on it or anything -- do you know?

A I don't think so, sir.

Q And this was a document that was in Mr. Dasti's pocket on the 17th of March?

A That's correct.

Q And do you have a recollection of the particular document, the original, as to its appearance at the time?

A It's like the other --

Q Well, were you able to determine whether that document had been carried around in somebody's pocket for more than two months?

A No, sir, I couldn't know -- I wouldn't know.

Q I understand if it didn't have a date on it, but if a document is crisp or if it is ripped and worn, could you perhaps tell the difference?

A I wouldn't know, sir.

Q All right.

Were you aware of the existence of a person named Frank Cotroni in Montreal prior to say January of 1971?

A You mean -- no, sir.

Q You didn't know who he was?

A Sure I knew who he was.

Q Did you know who he was -- in other words, know him and know who he was in January of 1971?

MR. PUCCIO: I object, there are two questions there.

MR. IANNUZZI: I will rephrase it, if that is the objection.

Q Did you know -- withdrawn.

Did you know of Mr. Frank Cotroni in January of 1971?

A I never spoke to the gentleman --

THE COURT: Did you know of him?

THE WITNESS: Yes, I do, of course. He is well-known.

BY MR. IANNUZZI:

Q And in 1971, were you in charge of the gambling division?

A In '71?

Q Yes.

A Yes, sir.

Q Were you aware of a lottery -- a hockey lottery in Montreal?

A There were quite a few.

Q Were you aware of the connection of Mr. Cotroni in connection with a hockey lottery?

A You will have to -- it is a hypothetic-- it is hypothetical (phonetic) that you are putting -- would you translate that?

MISS CLANCY: Hypothetical.

Q This hockey lottery, since 1971, has become a State-operated hockey lottery; is that correct?

A I am sorry, but you are on the wrong track. What you are talking about we have now is a lottery, but it is not a hockey lottery first of all. We have Government sweepstakes, of course, but not on hockey.

Q Is there such a thing as a hockey lottery?

A Illegal.

Q Illegal?

A Yes, of course.

Q Is there now such a thing that has become legal?

A No, sir, I am sorry there is no legal lottery on hockey. It's illegal.

Q OK, but there are such?

A They are.

Q Did you know whether or not Mr. Frank Cotroni was in any fashion connected with a hockey lottery as a result of your investigation?

A Well, I never myself -- myself, I never accused Mr. Cotroni of illegal lottery.

Q All right, but in any event, in connection with your investigation and ascertaining that there are such hockey lotteries, these have a substantial revenue in Montreal -- have you determined that?

A Yes.

Q All right, although you have never accused Mr. Cotroni of the hockey lottery or having a lottery where people bet on hockey games, as we bet on football games, is it a subject of your investigation that perhaps he might be connected with a particular hockey lottery?

A Hypothetic (phonetic).

Q Hypothetical again?

A Thank you.

Q Coming out of the hypothetical to the real --

THE COURT: Is he a suspect of being involved in an illegal hockey lottery?

If you cannot answer it yes or not, say you cannot answer it yes or no.

THE WITNESS: I cannot answer, your Honor.

THE COURT: All right.

BY MR. IANNUZZI:

Q You cannot answer it at all, or you cannot answer it yes or no?

A I can't. It is not that I do not want to answer, I don't know really.

MR. IANNUZZI: No further questions.

THE COURT: Mr. Klar.

CROSS-EXAMINATION

BY MR. KLAR:

Q Inspector Barral, when, for the first time, did you begin investigating Mr. Dasti in respect to gambling?

A In July of 1970.

Q July --

A 1970.

Q And who brought to your attention the fact that Mr. Dasti was involved in gambling?

A I knew as a police officer -- I knew that Mr. Dasti, by my informer and my agents, and so on.

(continued on next page)

Q And this investigation that you conducted, did this center around the Victoria Sporting Club?

A Would you please repeat this question?

Q This investigation that you conducted beginning July of 1970, which resulted in the arrest of Mr. Dasti on March 17, 1971, was this investigation centered around the Victoria Sporting Club?

A It was one of my investigations, yes.

Q This was a club that Mr. DAsti would seem to frequent on occasion, is that correct?

A Yes.

Q Did you investigate Mr. Dasti with respect to other clubs similar to the Victoria Sporting Club?

A I did so.

Q Now, the Victoria Sporting Club, do you know when that opened up?

A Do you mean --

Q When it opened up.

A At 837 Darsho Boulevard?

Q Yes.

A More than 10 years ago.

Q The Victoria Sporting Club had a charter, didn't it?

A Yes.

Q This charter was for a social club, is that correct?

A Yes, sir.

Q In Montreal, at the time, permits were issued, weren't they, for card playing and things of that type?

A No, sir.

Q Had there ever been permits issued in Montreal to permit card playing in a social club?

A Not that I know of.

Q Your investigation of Mr. Dasti concerned around what type of gambling violation in particular?

A You mean referring --

Q To cards as opposed to lottery or dice as opposed to football.

A At the Victoria Sporting Club we call it the Balbi which is a game with cards instead of using dice. They use cards.

Q Did you have an opportunity to set up a surveillance at the Victoria Sporting Club beginning July 1970?

A Yes.

Q Were you personally involved in this surveillance?

A Yes, sir.

Q How many men did you have in your unit?

A 57 men.

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Q How many assigned to this particular operation?

A It all depends.

Q On an average day.

A One man to three or four or five. It could be ten. It all depends.

Q This surveillance was conducted daily or weekly?

A It all depends, it could be daily for a week or once a week, it all depended on the information.

Q Did you keep a record of the individuals who entered the Victoria Sporting Club?

A We did for a time, yes.

Q When did you start keeping a record?

A Myself?

Q Or someone in your unit.

A It goes back years ago.

Q Before July of 1970?

A Yes, sir.

Q This investigation before July 1970 had nothing to do with Mr. Dasti, is that right?

A You have to understand I took over the Morality Squad in July of 1970. I started working on that.

Q You continued an on-going investigation of the Victoria Sporting Club, is that correct?

A That is correct.

Q In other words, Mr. Dasti and the Victoria Sporting Club had been under investigation prior to July 1970 for gambling violations?

A That is correct.

Q How much before -- how many years before July of 1970 was this investigation continuing?

A Could be ten years.

Q Do you know a Paul Oddo?

A Not personally.

Q Have you ever seen Paul Oddo?

A Not personally.

Q Have you ever seen Paul Oddo enter the Victoria Sporting Club?

A Not personally.

Q Do you know an Anthony Vanacore?

A No, sir.

Q Have you ever seen a photograph of Mr. Vanacore?

A I don't think so.

Q You wouldn't know if you've ever seen him enter the Victoria Sporting Club?

A I wouldn't know.

Q Do you consider Mr. Dasti a small-time gambler?

MR. PUCCIO: I object.

THE COURT: Objection sustained.

Q Mr. Dasti operates a large gambling casino?

MR. PUCCIO: I object.

THE COURT: I allow it.

A It was a gambling joint.

Q Do you remember testifying on an earlier occasion on this gambling --

A Yes.

Q Do you recall testifying that you considered Mr. Dasti a big-time gambler?

A I didn't say big-time, I said he was big. It all depends. There are some bigger.

Q Do you recall testifying you considered him one of the biggest gamblers in Montreal?

A I said he was a big gambler, from what I knew. I know there are some bigger than he is.

Q Did your investigation lead to any estimate of the amount of revenue that Mr. Dasti derived from his gambling operation?

A It is very hard for me to put some figures.

Q Your investigation must have led you to some conclusions as to what kind of revenue is being generated. Was --

A There was some days it was quiet, not much gambling in the house, and some other days there -- they were

more busy. There were more people. I never went there myself.

Q Mr. Dasti's gambling wasn't only limited to cards, in fact it was sports, perhaps football, hockey, things of that nature?

A I wouldn't know.

Q You wouldn't know?

A No.

Q Do you know if Mr. Dasti's gambling operation was limited to the Montreal area or extended beyond to other cities?

A From the members that we investigated, they were local.

Q Did you ever come across individuals outside of Montreal?

A A few, yes.

Q Any of them reside in New York?

A Not to my knowledge.

Q Any of them reside in Mexico?

A Not to my knowledge.

Q Had you ever had a surveillance of Mr. Dasti -- withdrawn.

Did you ever observe Mr. Dasti after a day's work at the Victoria Sporting Club go to a bank?

A Go to the bank?

Q Yes.

A Not myself, but some of my men told me that, yes.

Q Do you know how many occasions those reports indicated Mr. Dasti would go to banks, was it every day after work?

MR. PUCCIO: I object to anything this witness doesn't have personal knowledge of.

THE COURT: Sustained on the ground stated.

Q Did you receive reports from your -- withdrawn.

Did you receive reports from members of your unit relative to Mr. Dasti's daily activities, that is, his comings and goings?

A I did.

Q Did you review those reports on a daily basis?

A Well, daily -- as I said, we couldn't work a whole day on Mr. Dasti or a day during one week or a couple of days during a month, it depends.

Did you review the reports?

A Of course.

Q Did the reports indicate --

MR. PUCCIO: I object to what the reports indicated.

THE COURT: Objection sustained.

Q Based on your experience as an inspector for

the Morality Squad, from the type of gambler you considered Mr. Dasti, would it be fair to say that Mr. Dasti might have substantial amounts of money on his person during the course of a usual --

MR. PUCCIO: Objection.

THE COURT: Sustained.

Q When you arrested Mr. Dasti on March 17, you say you searched his wallet?

A Yes, sir.

Q Did he have any money?

A Yes.

Q How much money did he have?

A $7- to $800.

Q Excuse me?

A $7- to $800.

Q Have you ever had any other occasion to search Mr. Dasti?

A No, sir.

Q From your experience, sir, in the investigation of gambling, a man such as Mr. Dasti has to pay off the various winners that bet his gambling joint --

MR. PUCCIO: Objection.

THE COURT: Objection sustained.

Q Now, with respect to the March 17th arrest,

you took personal custody of Mr. Dasti, didn't you?

A Yes.

Q The other 48 individuals were just processed and searched by other members of your squad, is that correct?

A Yes, but --

Q Yes or no?

A Yes.

Q And you were conducting merely a gambling investigation here, were you not?

A Yes, sir.

Q Did you find any narcotics on Mr. Dasti?

A I did not.

Q Were you looking for narcotics on Mr. Dasti?

MR. PUCCIO: Objection.

THE COURT: Overruled, I will allow it.

Q Were you looking for narcotics?

A Well, of course for my own information I knew he wouldn't carry narcotics in his pocket but I knew that he was in the narcotics business.

Q Has Mr. Dasti ever been arrested for possession of any narcotics in Montreal?

A Not to my knowle dge.

Q You did search him, did you not?

A Yes.

Q You found no narcotics?

A No, sir.

Q You took the various documents from Mr. Dasti, you placed them in an envelope?

A Yes.

Q You gave them to your secretary?

A Yes.

Q How many documents were there?

A You mean the amount?

Q Yes.

A (No response.)

Q 5, 50, 110?

A There are some like this one (indicating).

Q I asked you if you knew how many documents there were.

A The amount exactly?

Q Exactly.

A No, sir.

Q Did you make any kind of notation on each of these documents so that you could compare which documents were returned to you as against the Xerox copies that were made and returned?

A I looked, as I said before, I looked at the original when my secretary gives me back the original and

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the photostatic copies.

Q If your secretary left one particular original in the Xerox machine, she didn't take -- withdrawn.

If your secretary had left one original in the Xerox machine and not returned it to you, you would have no way of comparing the originals as against the photostat to determine --

MR. PUCCIO: Objection.

THE COURT: Objection sustained, it is argumentative.

Q Your secretary made the Xerox copies?

A She did.

Q Did she make them in your office?

A No, sir.

Q Where were they made?

A In the Xerox machine department.

Q On what floor was that?

A The third floor.

MR. PUCCIO: I object to this line of testimony.

THE COURT: He already answered it.

MR. KLAR: May I have just one moment, your Honor?

THE COURT: Surely.

(Pause.)

Q You indicated before that you knew that Mr. Dasti

was involved in the narcotic transaction, is that right?

A Yes, sir.

Q Did you ever arrest him for a narcotics violation?

A No.

Q Anybody in your Squad ever arrest him for a narcotics violation?

A No, sir.

Q Anybody in the Montreal Police Force ever arrest him for a narcotics violation, to your knowledge?

A To my knowledge, no, sir.

Q Did you ever see Mr. Dasti's arrest record?

A Yes.

Q Are there any narcotic violations on there?

A To the --

Q As of March 17, 1971?

A No, sir.

Q The period you arrested him.

A No.

Q Therefore, it is only an assumption that Mr. Dasti is involved in narcotics?

A And information I received.

Q No arrests, convictions, just information?

A Good information, yes, sir.

Q But not good enough to determine -- withdrawn. Not good enough that it resulted in an arrest or conviction, is that right?

A Enough to make an investigation.

Q You didn't conduct that investigation?

A No, sir.

MR. KLAR: I have no further questions.

THE COURT: Anything further?

MR. PUCCIO: No, sir.

Q Anything further, Mr. Iannuzzi?

MR. KLAR: I would ask his testimony be stricken.

THE COURT: You may step down.

Do you have any more witnesses?

MR. PUCCIO: Yes, sir.

THE COURT: The jury is excused.

(The jury left the courtroom.)

MR. KLAR: I move to strike those portions of the testimony which relate to narcotics on the grounds the witness is not testifying from his own personal knowledge and I further move to strike --

THE COURT: On cross-examination you can ask him any question that relates to credibility.

MR. KLAR: I understand.

THE COURT: You ask what you believe, what

information you have, and you asked the questions.

MR. KLAR: I understand. With the same respect the witness indicated he doesn't know.

THE COURT: Motion denied.

MR. PUCCIO: Your Honor, with respect to scheduling, I have one additional witness and I have a couple of more stipulations to read which are short.

Mr. Iannuzzi just informed me that he has some witnesses from Mexico that he would like to put on out of turn.

THE COURT: How long will your last witness take?

MR. PUCCIO: I don't figure he will take very long but I have an application to make with respect to the last witness which I would like the Court to hear before I call him.

The last live witness will be Mr. Salve, a member of the RCMP who worked on narcotic investigations for a number of years. I believe he said 17 years. Through Mr. Salve I would like to offer expert testimony on the interpretation of narcotics jargon, and I cite --

THE COURT: You don't have to do it if he can qualify as an expert, just as any expert in a legitimate business can interpret to the jury what's meant in the trade in the use of particular phrases or words

MP/I
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as terms of art, so in an illegal business someone who shows a familiarity with the terminology in the trade can testify to what it means.

(Continued on next page.)

MR. PUCCIO: I also, in questioning Mr. Sauve, would like to elicit from him information or an opinion concerning various conversations which have been received in evidence in this case as to what the various words mean in their context or in the context of these particular conversations.

THE COURT: I don't know what you mean. Give me an example. You have to be more explicit.

(Pause.)

MR. PUCCIO: In other words, for instance in conversation one, Mr. Sauve I might add has heard the original tapes of the conversations and examined the transcripts. In Conversation one, Mr. Dasti says on Line 51: Do you know what I used to give you? Can you use the other one?

I would like to ask Mr. Sauve what this means in this conversation.

In other words, "The other one," is used very often in the tapes. One one occasion it means heroin on the other occasion cocaine.

THE COURT: I won't allow that. That is argument before the jury. You might argue this is what was meant. He is not testifying as an expert as to "the other thing."

MR. PUCCIO: For instance, in the Cirillo case,

Page -- well, I don't know the page because this is the slip decision, apparently in this case the defendants referred to narcotics as half filled out income tax forms. I didn't try this case but it would seem to me that term is not a term generally used in the business but is a term used in this particular instance by these particular people, and a detective, Detective Garcia, testified as an expert in five different narcotics cases testified that in his opinion these terms were being used by appellant with reference to narcotics.

MR. IANNUZZI: However, if your Honor pleases, in the Cirillo case -- if I can read over Mr. Puccio's shoulder properly, and I am not objecting to the fact he did not let me see it because we only have one copy -- he came in to testify to the use of terms by business people in business. The objection was made that was an invasion of the privacy -- or the province rather of the jury. I would suggest that going beyond that in the specific conversations that this specifically means such and such is an invasion of the jury's province.

Perhaps an expert can say what happens normally

THE COURT: That is just a matter of form. If I thought that the expert could say that the "other

3 thing" refers to narcotics, referred to heroin, I would allow him to use that form. But I don't believe that --

MR. PUCCIO: Your Honor --

THE COURT: He is talking about income tax returns.

MR. PUCCIO: In this case, in Cirillo, apparently I would say it is a half kilo they are talking about. Half filled out income tax form. I have never heard of that, and I have heard of other terms used. I have heard the term "suits." I can probably testify as an expert myself. But I never heard this half filled out income tax form. It seems to me what was used by the appellants in this particular investigation --

THE COURT: The other thing here, as I understand it, refers to another transaction as between the parties. It was not a term of art. Here it may be when they said the half filled out income tax returns that could be understood by anyone if they hadn't used that term before --

MR. PUCCIO: I would advance the term "half filled out income tax return" was not a general term in the trade but it was used by these people and this detective was permitted to testify about it. In this conversation, your Honor, a code was used and I

would ask someone to come in and translate the code.

THE COURT: Let me ask you something. Suppose the conversation was: Do you know what I mean -- and nothing else. You and I might expect or even know that when he said "Do you know what I mean" they were talking about a 12 kilo delivery of cocaine at $9000 at the corner of Broadway and 49th Street, if you knew of the entire conversation. But that is different from having an expert come in and say "Do you know what I mean" means something peculiar to the illicit narcotics business, therefore an expert can tell the jury what it meant.

You can go to the jury and say as laymen when they said the other things, they didn't want to say what the other thing was so they said "the other thing."

I don't need an expert for that. If the Court of Appeals said just because that was used, the half filled out income tax return, and that that meant a half a kilo and the expert testified to that, all I can say is they are wrong and I won't follow it.

MR. PUCCIO: As I said, I am not familiar with the entire case.

THE COURT: There must be more to it than that.

MR. PUCCIO: I suspect -- it was tried by our

office. I suspect a half filled out income tax form since it's such a strange form was a term used by this group of people and not narcotics people in general.

THE COURT: I suspect the same thing. And I say that in the context of that case, maybe the parties did use that term, but we are talking about calling an expert. How does an expert know what these people meant? He doesn't know anymore than the jury would know in the context of the whole case. Anymore than they would just say, well, one, two, three. And to us that means a half kilo of heroin.

MR. PUCCIO: I think that a person working on narcotics, and I've seen it in my own experience with investigators who worked on narcotics who is used to listening to narcotic conversations can tell. I believe there was such testimony in the Steppenberg Trial probably by Detective Reid, I don't recall if it was he, one of the detectives testified that when talking about horses they were talking about heroin. There were different words they used which were meant to convey narcotic meanings.

THE COURT: That is the trouble with only getting a small portion of the case through an opinion. Now in Steppenberg, as I recall it, they were actually going to import horses because someone was also in the

horse business. That's what happened. And they were going to conceal the heroin in the horses and after awhile it became common to these people that when they talked about horses even though they weren't going to import the horses they were going to use the horses. So it is possible under certain circumstances that an investigator understanding what their course of business was could testify that this was common for them to interpret the term that way. That is not the same here.

(Continued on next page)

MM fls.

(Out of the hearing of the jury as follows)

MR. PUCCIO: Well, your Honor, I would further also indicate that the defense by this question is on cross-examination and mostly really by the questions on cross-examination have indicated that a defense might be raised here, they were talking about gambling, junkets --

THE COURT: That's all right.

MR. PUCCIO: I know there are ways to rebut that type of argument. The best way to do it, I suggest is to have someone who has experience in listening in in these conversations and worked in narcotics investigations for a long period of time to translate the code --

THE COURT: I am trying to formalize a rule of evidence and I don't know whether I have yet, but I would articulate it this way: You may offer evidence that certain words or phrases are used in a trade or profession, be it legal or illegal by showing its use and common acceptance by anyone in the trade.

I am trying to think of words, I can't think of any. However, there might also be a subsidiary principle and that is, when someone is familiar with the usage between parties to a transaction over

a long period of time as to what they mean by the use of certain words, so that if in the trade, and if it's in the tailoring trade, somebody says, "I stuck myself with a camel," you know the party didn't stick himself with a camel, you know it meant it was a needle, but after that was established that it was used, then I can use that in testifying, not really with an expert but with the familiarity with the usage between these parties of certain terms and that might be the basis for this, in the Cirillo case.

You haven't demonstrated for Mr. Sauve to come in and use the terms.

MR. PUCCIO: I have some additional facts to add, but to finish up on this point to show how difficult sometimes it can be --

THE COURT: I have a stock answer for that. It isn't easy for the government to prove a case but they have some of the finest lawyers in the country doing it. It isn't always true.

MR. PUCCIO: As far as Mr. Stewart is concerned, I asked him if the word suits meant anything to him and he said absolutely it's narcotics. As far as Mr. Stewart and my personal experience, suits is personally used.

THE COURT: I have heard it no less than 100 times.

MR. PUCCIO: He admitted that was the term used by the group of people that I was dealing with and it's clear also --

THE COURT: I am sorry, you just didn't prepare him to establish the basis.

MR. PUCCIO: It's not a question of preparation, it's what he knows.

THE COURT: He said it was used between his people, not Dasti and Cotroni.

MR. PUCCIO: And that's all he can testify to.

THE COURT: I am sorry, he might have said and maybe your preparation might have ethically have been able to say to him that after you deal with enough people in the business you fully understand what the terms used, but he said he didn't understand that to be so.

MR. PUCCIO: I want to establish the difficulty of establishing what is common usage in the trade. It can be shown that narcotic dealers use a variety of words to describe narcotics, the main thing is they don't use cocaine or heroin. With respect to Mr. Sauve, prior to the Vegas thing, Mr.

Sauve investigated Mr. Cotroni, Dasti and Orsini for a lengthy period of time and he has heard literally thousands of conversations of these people on tape on other projects. He can testify that he is familiar with this group of people and he knows the terms that they use when discussing narcotics.

THE COURT: How does he know that?

MR. PUCCIO: Because of listening over and over --

THE COURT: Suppose he heard them say the word "suits" 1000 times, how does that prove they were talking about cocaine.

MR. PUCCIO: I can say this --

THE COURT: You just know they are not in the suit business. You and I know and feel that that is what --

MR. PUCCIO: There have been seizure of narcotics related to these conversations that aren't the subject of this particular trial but in other words Mr. Sauve would listen to a conversation and as a result and investigation would be undertaken and a seizure would be made tied to these defendants, not in this issue, but he can testify concerning these people what they meant by these terms.

He can testify that they have used ties, they

have used wine to refer to heroin, they have used suits, clothes, any number of terms.

THE COURT: I am not satisfied from what you tell me that they can ever testify to that.

MR. PUCCIO: I can inquire of them further.

THE COURT: You better bring Mr. Sauve in and let's find out what he can testify to outside of the hearing of the jury.

MR. PUCCIO: All right, your Honor, I have a slight problem and I'd like perhaps to ask your Honor's permission before Mr. Sauve is brought in on this, since he is going to be here anyway, if I could put two witnesses on the stand who will be short and who have to leave for Mexico this evening, it's the only plan available.

(Continued on next page.)

THE COURT: What are they going to testify to?

MR. IANNUZZI: In reference to Mr. Catania and the house in Mexico and the rent that was paid but never paid, etc., that Mr. Catania was asked about.

This is the house he allegedly rented on behalf of Mr. Cotroni.

THE COURT: That he never paid the rent to the party or that there was an argument.

MR. IANNUZZI: Both.

THE COURT: I don'tknow that the other would -- well, you probably would have to use one to prove the other.

MR. IANNUZZI: Yes, sir.

THE COURT: How long will you be with Mr. Sauve to try to establish this?

MR. PUCCIO: I don't know, your Honor. I don't believe it will be very long.

THE COURT: All right. Let me hear what Mr. Sauve has to say about this.

Please be seated. You have been previously sworn.

MR. SAUVE: Yes, sir.

THE COURT: You are still under oath.

MR. SAUVE: Yes, sir.

PAUL SAUVE, called as a witness, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. PUCCIO (Cont'):

Q You are a member of the RCMP; is that correct?

A Yes.

Q You are in charge of the International --

THE COURT: We have gone through all this. This is in the record.

MR. PUCCIO: All right, your Honor.

Q You have been employed for how long?

A Twenty-one and a half years with the RCMP.

Q How long have that have you spent working on narcotics investigations?

A 18 years.

Q Can you approximate for us how many narcotics investigations you have been involved in?

A That would be hard to say, but numerous international cases.

Q Now, you are familiar with Frank Dasti and Frank Cotroni; is that correct?

A Yes, sir.

Q Have you investigated both Mr. Dasti and Mr. Cotroni over the years?

A Yes, sir, I have.

Q Approximately when did you begin investigation Mr. Cotroni and Mr. Dasti?

A 1968, the beginning of 1968.

Q And you have investigated I take it Mr. Orsini in conjunction with that?

A As well and Mr. Santo Mendola.

Q Anyone else related to the Cotroni group that you investigated?

A Yes, Joe Horvath.

THE COURT: What is his position at the Victoria Sporting Club?

THE WITNESS: Horvath, he is deceased, no. He died last year.

THE COURT: What was his position?

THE WITNESS: I don't know exactly what he was doing there.

THE COURT: But he worked there?

THE WITNESS: He was working there.

Q Now, Mr. Sauve, you have listened to various tape recordings made in connection with the so-called Vegas projects?

A I have listened to most of them, yes.

Q That would be numerous conversations?

A Numerous of them, yes.

Q In addition, those are the conversations in addition to the 17 conversations which are received in evidence in this case?

A That's correct.

Q Now, Mr. Dasti's voice appears on the tape recordings and Mr. Cotroni's voice appears in the tape recordings; is that right?

A Yes.

Q You are familiar with Mr. Dasti's voice; is that correct?

A Yes.

Q Mr. Cotroni's voice?

A Yes.

Q Mr. Orsini?

A Yes.

Q Mr. Horvath's voice?

A Yes.

Q Now, are you aware that the Vegas projects began in approximately July of 1970?

A Yes.

Q Prior to the -- well, withdrawn.

Aside from the Vegas projects and the tape recordings made in connection with the Vegas projects, have you listened to other tape recordings of telephone conversations of Mr. Cotroni and Mr. Dasti and Mr. Orsini?

A Other than the Vegas?

Q Yes.

A No, I haven't.

Q Well, other than in the Vegas projects, have you -- withdrawn.

Q Have you ever heard Mr. Orsini or Mr. Cotroni or Mr. Dasti discuss narcotics transactions aside from the Vegas projects?

A No, I haven't.

MR. PUCCIO: May I just have a minute, your Honor? MC fl.

THE COURT: Yes.

In the many, many investigations that you were -- that you undertook, did you become familiar with some of the jargon and language used in the illicit narcotics trade?

THE WITNESS: Yes, I have.

THE COURT: For example, a word substituted for cocaine. Instead of using cocaine other words are used?

THE WITNESS: Yes.

THE COURT: What words do you know that are generally used in the trade?

THE WITNESS: If we are talking about Cotroni-Dasti, they could have referred to it as fruits or carrots or -- you are referring to cocaine.

THE COURT: Yes.

THE WITNESS: There was one cocaine deal and they were referring to it as suits.

THE COURT: Suits?

THE WITNESS: Yes.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. PUCCIO: (Cont.)

THE COURT: How about generally in the trade? Is it ever referred to as suits or shirts?

THE WITNESS: Yes, it is.

THE COURT: Generally, you know that in other deals with other people?

THE WITNESS: Yes, it is used, it is referred to as suits.

THE COURT: On a hypothetical that a narcotic seller, A, calls, called Buyer B and said, "I have five suits on hand," you have an opinion as to what would be meant by that?

THE WITNESS: If we are staying with the group --

THE COURT: No, just general.

THE WITNESS: With the Montreal Group I would say cocaine, just this group I would say cocaine, I would say with this group here it's heroin or cocaine.

THE COURT: How about generally amongst narcotics dealers?

THE WITNESS: Suits and other terms as well.

THE COURT: So that would be used?

THE WITNESS: Yes.

THE COURT: Apparently here is a witness that

is ready to testify that the term suits is used commonly in the illicit trafficking of cocaine.

THE WITNESS: I don't know what other words you are asking about.

MR. IANNUZZI: I respectfully except to your Honor's line of questioning and your Honor's questioning, and the questioning by the Court.

THE COURT: On what grounds?

MR. IANNUZZI: I feel your Honor on occasion takes over the province of the prosecutor in asking questions.Where the prosecutor has not gone, your Honor picks up where he leaves off and continues and I respectfully request, or object to that as improper.

THE COURT: All right.

You objection is noted.

MR. IANNUZZI: Thank you, sir.

THE COURT: I am trying to get through because if this goes through 4:30, you people will have to wait until tomorrow.

MR. IANNUZZI: I understand. I appreciate your Honor's concern.

THE COURT: Yes.

BY MR. PUCCIO:

Q Mr. Sauve, are you familiar withthe term or

word "rent" that is used in various conversations?

A Yes, I am.

Q That have been received in evidence in this case?

A Yes, I am.

Q Does the term "rent" have any usage, general usage in the narcotics business?

A Well, I still have to refer to that same group. The word "rent" was used as price per kilo.

Q You say that would be reference to this particular group of people?

A Yes.

Q How about generally in the narcotics business? Have you heard any other narcotics suspects or people you investigated using rent as price per kilo?

A No.

THE COURT: How would you know that rent referred to narcotics by this group?

THE WITNESS: It is by listening to the tape and reading the transcripts and the way it is said in the conversation.

THE COURT: It is just as I said, it is the kind of argument that you could make but not subject to an expert opinion.

Now, is this your last witness?

MR. PUCCIO: Yes, I have a stipulation.

THE COURT: Well, I suggest that we bring the jury out and do the best you can with the witness, if you want to.

Do you want to put this before the jury?

MR. PUCCIO: Yes.

THE COURT: I suggest we do that and finish the case so that the two witnesses from Mexico can get on.

MR. PUCCIO: I want to call Mr. Blasof so that he can indicate that the samples are no longer in existence, cannot be produced in court and were destroyed in the ordinary course of business.

THE COURT: Do you have any objection to these two witnesses going on before?

MR. PUCCIO: I prefer to finish the Government's case and then proceed with these witnesses.

THE COURT: We will take a short recess.

MR. IANNUZZI: If you are going to go to 4:30 and it is now 17 minutes after 3:00 that I have two short witnesses, it is a family that has to get back to Mexico --

MR. PUCCIO: I will probably want to continue

this cross-examination of them. I can anticipate it continuing until -- into tomorrow.

I have no advance notice of defense witnesses, and I have no way to check the veracity of their testimony, the accuracy in their testimony in this case --

THE COURT: When, for the first time, did you know that two people were coming from Mexico?

MR. PUCCIO: Just now.

THE COURT: All right,we will take a short recess.

(continued next page.)

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(Out of hearing of the jury.)

THE COURT: Are we ready to proceed?

MR. PUCCIO: I think counsel misunderstood. I understood 3:30.

THE COURT: I said a short recess.

Do you take all this down, Mr. Miele?

THE COURT REPORTER: Yes, your Honor.

THE COURT: Please read back what I said just before the recess.

(The Court Reporter thereupon read as directed.)

THE COURT: All right, I said a short recess.

MR. IANNUZZI: May I indicate that with reference to notification and with reference to witnesses we have not been notified by the Government as to any of the witnesses, and Mr. Stewart and unfortunately these things happen and there is a time factor and I have been cooperative with Mr. Puccio.

It is very important that these people get back.

THE COURT: I know it is very important. I will do the best I can. I don't want to point out the repetitious examination and cross-examination, and I sat by and I allowed it. Now don't complain because it is taking too long.

MR. IANNUZZI: It is just a question of this

afternoon.

Perhaps we can do it now and I am sure they won't take long.

THE COURT: I always do it with consent.

Now, Mr. Puccio does not promise you that he will be finished with the witnesses today. He says he wants a few minutes to check.

You found that one week wasn't enough for you for Mr. Stewart.

MR. IANNUZZI: Mr. Stewart has an extensive background and these people do not.

THE COURT: Well, we don't know about your witnesses, either.

MR. IANNUZZI: If I knew anything about them I would tell you.

THE COURT: I know you would.

Now, Mr. Puccio might find he needs more time than you do.

MR. IANNUZZI: I think we should make an attempt.

THE COURT: I think that is fair. Every attempt should be made to accommodate witnesses.

Is Mr. Sauve present?

MR. PUCCIO: I just want to call Mr. Blasof for one point.

(The jury entered the courtroom at 3:25 p.m.)

S T A N L E Y B L A S O F , having been previously duly sworn, resumed the stand and testified further as follows:

MR. PUCCIO: I have a few additional questions.

THE COURT: The juries are trying to translate to me the low temperature in the courtroom. It must be 65. All I can say is that you'd better get used to it. You know the answer to all that is bring sweaters because we are trying to conserve heat. As a matter of fact, my complaint is that my office is too warm. It is about 65 or 66 -- is the jury room too warm?

THE FOREMAN: Yes.

THE COURT: Most of our problem is poor distribution.

Some of our Canadian friends ought to know that we need some oil down here. Maybe we are trying to make a point with them in the courtroom.

Please proceed.

DIRECT EXAMINATION

BY MR. PUCCIO (Cont.):

Q With respect to the two exhibits you gave testimony, that would be the two cocaine samples, one and two, are those two samples still in existence to your knowledge?

A No.

Q Have they been destroyed?

A Yes.

Q And was that destruction in the ordinary course of business?

A Yes.

Q What was the date of the destruction?

A 5/30/73.

Q Was that by order of your Regional Director?

A Yes.

MR. PUCCIO: That is all.

MR. IANNUZZI: I have no questions.

MR. KLAR: No questions.

THE COURT: Thank you. You may step down.

Next witness, Mr. Puccio.

MR. PUCCIO: Your Honor, I have a stipulation which I would like to read first.

THE COURT: All right.

MR. PUCCIO: It has been stipulated if a representative of the Canadian Pacific Airline were called by the Government he would testify by reference to passenger list and manifest in his custody that Mr. Cotroni, the defendant, departed Montreal for Mexico aboard Canadian Pacific Airline flight 504 at

5:00 p.m. on January 1, 1971.

In addition, he would testify that Mr. Cotroni departed Montreal aboard Canadian Pacific Flight 203 at 3:35 p.m. on January 14th and that the flight was bound for Toronto, and in Toronto Mr. Cotroni changed to another Canadian Pacific flight bound for Mexico which was Flight 502.

In addition to that it has been stipulated if a representative of the Laurentian Hotel were called as a witness by the Government he would testify concerning records that are kept, made and kept in the ordinary course of business at the Laurentian Hotel and the records would indicate that Mr. Vincent Altamura and the brother, he would testify that a hotel registration card indicating the name of Vincent Altamura and brother, 5525-98th St., Rego Park, New York checked into -- he would testify -- your Honor, may I have marked in evidence? It would be easier?

The original record of this is kept in the regular course of business in the Laurentian Hotel.

THE COURT: May it be marked in evidence?

MR. IANNUZZI: May I see it?

THE CLERK: Two-page document marked Government's Exhibit 50 for identification.

MR. PUCCIO: Let me restate that for the record.

THE COURT: Just a moment.

It is not in evidence.

It may be marked, right?

MR. KLAR: Yes.

MR. IANNUZZI: Yes.

THE CLERK: Government's Exhibit 50 previously marked for identification now marked in evidence.

(So marked.)

MR. PUCCIO: I will rephrase the stipulation:

This stipulation is that if a representative of the Laurentian Hotel were called as a witness he would testify that Government's Exhibit 50 which has now been received in evidence was kept, was a record kept in the ordinary course of business in the files of the Laurentian Hotel.

Government's Exhibit 50 indicates, Sheraton Motel and Motor Inn, which is the Hotel Laurentian, the name, Vincent Altamura and brother, 5525-98th St., Rego Park, New York checked in on January 14 at 9:30 A.M., 1971.

The record indicates he checked out on January 18 at 9:27 A.M. of 1971 and that he had an automobile.

May I circulate this, your Honor?

THE COURT: Yes.

MR. PUCCIO: I will call Mr. Sauve.

P A U L S A U V E , having been previously duly sworn, resumed the stand and testified further on direct as follows:

THE COURT: You understand that you have been previously sworn and still are under oath?

THE WITNESS: Yes.

Q Mr. Sauve, as you have already indicated you have been employed with the Royal Canadian Mounted Police for a number of years?

A Yes.

Q For how many years were you working on drug investigations?

A Eighteen years.

Q Would you be able to approximate for us how many drug investigations or investigations involving narcotics that you worked on during the past eighteen years?

A That would be hard to say but I have been involved in numerous international cases, heroin cases.

THE COURT: Over 200?

THE WITNESS: Way over 200, yes, sir.

Q In excess of 200 investigations?

A Yes.

Q During the course of these investigations, Mr. Sauve, have you become familiar with any jargon or terminology that is used by people in the narcotics business?

A Yes.

Q Have you either -- withdrawn.

Have you received information over the years concerning words or terminology or jargon that is used by people in the narcotic business?

A Yes.

Q I am talking about the narcotic business generally.

Do you understand?

A Yes.

Q Now, does the word suits have any particular meaning in the jargon of the narcotic business?

A I would refer to suits as a kilo of cocaine or heroin.

Q So in your experience suits have been referred to by people in the narcotic business as either cocaine or heroin?

A That is my experience in Montreal.

MR. IANNUZZI: If your Honor please, I object to the answer and ask it be stricken because I don't

think it is responsive to the narcotics business in general.

THE COURT: Is this narcotic business generally in Montreal? Is that the term used?

THE WITNESS: It has been used many times, suits.

Q In the narcotic business in Montreal.

A Right.

MR. KLAR: I think we already noted our objection to this line.

May we renew that objection?

THE COURT: Yes.

MR. PUCCIO: No further questions.

THE COURT: Any questions, Mr.Iannuzzi?

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Of course, Mr. Sauve, the word suits in Montreal always has other meanings?

A Of course it has. Yes.

Q And so it depends on who is interpreting when the word is used as to what it means at a particular time?

A It depends on the sentence in which the word suit is put in.

Q Andit has to be listened to and adjudged?

A Right.

Q And by the way, sir, when you were -- may I have a moment, sir?

THE COURT: Yes.

MR. IANNUZZI: I have no further questions.

THE COURT: Anything further, Mr. Klar?

CROSS-EXAMINATION

BY MR. KLAR:

Q Let me just ask you a hypothetical question: If you are listening to a conversation between two individuals and they have no known narcotics arrests, narcotic arrest record or conviction record, suppose they have a record as to something else like gambling and you heard these individuals talking about five suits. Would you think these individuals were talking about narcotics?

A It all depends on the sentence or phrase in which the word suit would be used.

Q If these two gamblers said to one another, I have five suits. I have them here. Come on up.

A It depends on what was said before and after.

Q It is possible it would have no connection at all with narcotics?

A I don't know. I have five suits, and what else?

Q Two gamblers talking on the phone. You know

they are gamblers.

A All of a sudden he says I have five suits?

(continued next page)

Q They have been using those terms all their lives, do you have any reason to believe that it would be narcotics, cocaine, heroin?

A I couldn't answer. I do not know. I would have to listen to the whole conversation to tell you?

MR.KLAR: Nothing further.

THE COURT: Anything further?

MR. PUCCIO: I have some additional questions.

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Sauve, did you ever listen to a telephone conversation, or I should say a tape recording of a telephone conversation between Mr. Guido Orsini and Mr. Santo Mendola and Mr. Frank Cotroni, which call was being placed by Mr. Orsini from Italy to Mr. Mendola and Mr. Cotroni on December 15, 1970?

A Yes, I have.

MR. IANNUZZI: If your Honor pleases, I am going to object to this line of questioning.

THE COURT: I have not heard the question.

MR. IANNUZZI: Oh, all right.

Q And this conversation was made in connection with Vegas 9, the wiretap on Mr. Mendola's residence; is that correct?

A Right, that is correct.

Q Now, can you tell us as best as you can recall

what the substance of that conversation was?

A Well, they were talking about thirty bottles of wine that Mr. Orsini had in his possession that he wanted to ship to Montreal. He did not hnow whether he would have to take care of shipping the stuff himself, or have someone else biing the stuff over to Montreal, and they were discussing about buying a car -- a Ferrari -- in which to put the stuff.

MR. PUCCIO: I have no further questions.

RECROSS EXAMINATION BY MR. IANNUZZI:

MR. IANNUZZIO: Mr. Puccio, may we have the log of that particular conversation so we can save Mr. Sauve from recollecting without a reference?

(Document handed to counsel.)

May I have a moment to read this, Judge?

THE COURT: Surely.

(Pause.)

Q By the way, Mr. Sauve, have you looked at a log of this conversation within recent times?

A I think I have read a report -- one of my reports.

Q Now, did you actually listen to this conversation yourself, or did you read Mr. Couture's log?

A I listened to the conversation, but it was partly in Italian, which I do not speak, partly in French, and partly in Italian again.

Q So you had to rely on Mr. Couture's log?

A Mr. Couture and the Interpreter.

Q As a matter of fact, did not Mr. Cotroni and Mr. Orsini speak about wine that was to be brought back to Montreal?

A It was to be brought back to Montreal?

Q Yes.

A Yes.

Q And did not Mr. Orsini indicate in French that they had to have the approval of the Liquor Board to bring wine back into Montreal?

A Yes, that is correct -- That is in the transcript.

Q Is that your understanding, that they were going to go to the Montreal Liquor Board, or the Quebec Liquor Board, and that was a code for narcotics?

A Would you repeat the question?

Q Surely.

Did you think the reference to the Liquor Authority for Montreal or for Canada was a reference among people in the narcotics business, and that meant something in particular?

A We have a Liquor Board in Montreal. If they want to import, you can go to the Liquor Board, but you don't buy a Ferrari to import wine.

Q I will get to the car.

I am asking you about the Liquor Board. Do you have a Liquor Board?

A Yes.

Q Is it your impression when someone says they are going to go to the Liquor Board for the importation of wine, that has a special meaning amongst narcotics people?

A No.

Q But that was in the conversation?

A That was in the conversation, right.

Q Was it also in the conversation that they already had seen a notary with reference to getting the clearance for the purpose of bringing the wine to Montreal?

A That is correct.

Q A notary is an official in Montreal?

A That is correct.

Q Was it your impression that a reference to the fact that they were going through a notary, as well as the Liquor Board, was a reference to narcotics jargon amongs narcotics transactors?

A I believe it was.

Q You believe it was?

Is it not a fact that someone would have to see a notary and a Liquor Board to import wine?

A I do not see why they would have to go see a notary for that.

Q Is it legal or illegal to see a notary?

A It is perfectly legal.

Q Didn't Mr. Orsini indicate that he wanted everything to be done properly in reference to the Liquor Board?

A Right.

Q Is that correct?

A That is correct.

Q And it was your impression, however, that all of this was -- had illegal overtones? As opposed to legal overtones?

A That was my interpretation.

Q When you spoke about the purchase of a Ferrari, or an automobile, is it a fact that Mr. Orsini spoke about the purchase of a vehicle?

A Correct, yes.

Q And in the conversation, did he indicate that he put a deposit on the car?

A That is correct.

Q And did he indicate, or was it Mr. Couture -- Withdrawn.

Now, I ask you, sir, was it specifically said by Mr. Orsini that they were going to put the wine in the car, or was it something that was assumed from the context of the fact that he was buying a car?

A I have listened to numerous telephone conversa-

tions pertaining to this, and I would not remember at th s time whether it was this one, or in a previous one, or a subsequent conversation.

Q Sir, you are testifying as a result of listening to this conversation, Vegas 9, December 15, 1970, Mr. Orsini speaking to Mr. Cotroni, that he bought a car to put the wine in.

Now, is it your testimony now that you do not recall whether it was in this conversation that it was said?

A I said there was numerous conversations. I do not know if it is in this one that he is talking about buying a car. There is a car mentioned in this one transcript that you have in front of you.

Q I am going to ask you to look at it, and I will ask you whether or not it says that Mr. Orsini said that he was going to put the wine in the car.

(Document shown to witness.)

I am talking about Mr. Orsini's words, and not Mr. Coutore's assumptions, or your's.

A No, it is not in this one.

Q Pardon me?

A It is not in this one.

Q It is not there?

A No.

Q Do you know where the conversation is? Do you have a log for the conversation that you are talking about?

A I do not have any logs?

Q So that the conversation that you have, that you just testified to before this jury in which Mr. Orsini said he was going to put wine in a car, in fact those words were never spoken by Mr. Orsini, were they?

A They might have been talking about Mr. Mendola in a subsequent --

Q I am asking you about this conversation that you testified to.

A Not in this one.

Q You said in answer to Mr. Puccio's question that during the conversation -- and he identified the Vegas 9, December 19, 1970, conversation -- "Yes, I remember the conversation," didn't you?

A Yes, I did.

Q And you said that Mr. Orsini and Mr. Cotroni and Mr. Mendola were talking about wire?

A They were talking about thirty bottles of wine.

Q I am asking you if you answered Mr. Puccio and said, "Yes, they were talking about wine"?

A They were talking about wine.

Q You also said that Mr. Orsini said that he was

going to put it into a car and ship it here, or to Montreal?

A It was my interpretation.

Q Was that ever said by those people -- I am asking you about that conversation?

A Not in this --

MR. PUCCIO: I object, your Honor.

THE COURT: Overruled.

MR. IANNUZZI: I have no further questions.

THE COURT: Mr. Klar?

MR. KLAR: No questions.

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Sauve, you say it is your interpretation that the thirty bottles of wine were going to be put into the Ferrari?

A With regard to this transcript.

Q Have you listened to any other conversations on this same subject, that is, Orsini purchasing wine in Europe for transportation to Montreal?

A Yes, I have.

Q Approximately how many other conversations have you listened to?

MR. IANNUZZI: I am going to object, unless we have a representation that such logs exist.

MR. PUCCIO: I am asking the witness, your Honor.

THE COURT: Do you have any logs? Do you have the conversations?

MR. PUCCIO: I believe we do, your Honor.

THE COURT: Check it out and make sure.

(Pause.)

MR. PUCCIO: Your Honor, these logs are in French. May I show them to Mr. Sauve to refresh his recollection?

MR. IANNUZZI: Let me know where the logs appear.

MR. PUCCIO: Yes, I am showing Mr. Sauve page 13 of Vegas 9, which is the Santo Mendola Project.

THE COURT: Have those logs been read into the record?

MR. PUCCIO: No, they have not been read into the record. They have been turned over to defense counsel.

THE COURT: I won't allow it, unless Mr. Couture testifies to what he heard.

MR. PUCCIO: I believe there has been tentimony that Mr. Couture listened to every recording.

THE COURT: It is not enough. He will have to testify as to what this says, and submit himself on cross-examination before I let this witness testify as to what is in that record, if there is an objection.

MR. IANNUZZI: There is, sir.

BY MR. PUCCIO: (continued)

Q Mr. Sauve, does that log refresh your recollection as to whether or not you yourself heard the tape recording of the conversation between Santo Mendola and Guido Orsini between the 19th -- between the 18th and the 20th of December, 1970?

A I --

MR. IANNUZZI: I am going to object. I think there is no proper foundation for a refreshment of recollection, where there has been no indication that there is not any recollection.

THE COURT: I am going to allow it if this witness heard the tape.

A I do not remember on that date, or if I read it later on.

MR. IANNUZZI: May we know what the answer is?

THE COURT: What was the answer?

(Answer read.)

THE COURT: Did you hear the tape of the conversation, not whether you read the report or read the log?

THE WITNESS: Mendola or Orsini talking --

MR. IANNUZZI: Objection as to what is going on. The question is very simple.

THE COURT: The question is very simple.

THE WITNESS: The conversation?

THE COURT: Did you hear the tape?

THE WITNESS: They were in Italian.

THE COURT: So you could not?

THE WITNESS: I couldn't.

MR. PUCCIO: Then I will recall Mr. Couture on that, your Honor.

THE COURT: Do you want this witness to step down?

MR. PUCCIO: One further question.

Q You have indicated that you have heard the conversation of the 15th -- you heard the tape recording of the tape conversation between Orsini, Cotroni and Mendola?

A Yes.

Q In addition to which, you heard other conversations pertaining to this subject?

A Yes, I have.

Q That is, the subject of the wine and the Ferrari?

A That is correct.

Q Now, you indicated to Mr. Iannuzzi on cross-examination --

MR. IANNUZZI: May we have that correct, it is Iannuzzi.

THE COURT: However you like it.

MR. IANNUZZI: Thank you very much.

Q You indicated to Mr. Iannuzzi that your impression was that Mr. Cotroni and Mr. Mendola and Mr. Orsini were talking about narcotics?

MR. IANNUZZI: Objection, if your Honor pleases. The witness indicates that he couldn't understand the conversation.

THE COURT: May I have the question?

(Question read.)

MR. IANNUZZI: In addition to repetition, sir.

THE COURT: I assume that is a preliminary question?

MR. PUCCIO: Yes.

THE COURT: I will allow it.

MR. IANNUZZI: If your Honor pleases, the question or course is asked for the purpose of gaining an answer, but the witness indicated that he did not understand the conversation. This, without an answer, is a statement by Mr. Puccio. I suggest --

THE COURT: Read the question again, and please answer it if you have not.

(Question read.)

MR. IANNUZZI: Objection to.

A That is correct.

Q Now, what was your impression based upon, Mr.

Sauve?

MR. IANBUZZI: Objection.

THE COURT: This was in answer to Mr. Iannuzzi's question on cross-examination; is that right?

THE WITNESS: That is correct.

THE COURT: I will allow the witness to explain his statement, then.

Q What was your impression based on?

MR. IANNUZZI: The conversation was apparently interpreted. We are talking about one conversation, as opposed to any others.

THE COURT: Do not pay any attention to that. Just answer the question.

MR. IANNUZZI: I beg your pardon? Is it that I have no right to make objections?

THE COURT: You have a right to make objections in proper form.

Before this case started, I told you that when you state an objection, state the ground, no proper foundation, irrelevance, hearsay, and then if you want to make a statement or argument, I would exclude the jury.

MR. IANNUZZI: I do not want to make argument.

THE COURT: Let me get through. You, on a number

of occasions have made statements without objection, and I told you not to do it, so when I told the witness not to pay attention, it was because there was no objection being made, just a statement.

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(continued on next page.)

MR. IANNUZZI: I was making objection.

THE COURT: That is not the form of making objection.

MR. IANNUZZI: Objection, no proper foundation, sir.

THE COURT: Now you said it. Objection overruled.

MR. IANNUZZI: If your Honor pleases, I think that it is necessary, because of the tone that you use with me to --

THE COURT: The jury is excused.

MR. IANNUZZI: Thank you, sir.

(Jury excused.)

THE COURT: Mr. Iannuzzi, you become more and more disruptive as this trial comes to an end and you have been doing that more frequently and if you do not want me to use the tone I am using or used, then you abide by the rules. Do you understand that?

MR. IANNUZZI: I certainly do, sir.

However --

THE COURT: Now put everything else on the record.

MR. IANNUZZI: I indicated that I had an objection. I do not believe that it is necessary to

state the ground. I made an objection and you tell the witness not to pay attention to me, that is not a proper judicial ruling.

THE COURT: You do not know the rules, Mr. Iannuzzi?

MR. IANNUZZI: I made an objection. That is sufficient under the rules. If your Honor requires more, I can expand upon it.

THE COURT: You did not understand what I said at the very outset of this trial?

MR. IANNUZZI: Yes, sir.

THE COURT: Do you recall what I said?

MR. IANNUZZI: Yes, sir.

THE COURT: That is stated in the rules, that is not just my idea.

MR. IANNUZZI: I made an objection --

THE COURT: I said make no statement or argument in front of the jury.

Read back the form of Mr. Iannuzzi's objection.

(Record read.)

THE COURT: That is the rule.

MR. IANNUZZI: You are asking the witness a question --

THE COURT: Read it again.

(Record read.)

THE COURT: What I said I will allow the witness to answer --

MR. IANNUZZI: I understood that.

THE COURT: You do understand that it is a ruling? What happened after that?

(Record read.)

MR. IANNUZZI: I was stating the reasons for the objection.

THE COURT: Anything else you want to say on the record?

MR. IANNUZZI: I have said it.

THE COURT: Mr. Iannuzzi, if you say anything more before the jury, except objection on the ground that -- if you say anything more than that, if in addition to that you make an argument, I will sit you down and reprimand you before the jury.

MR. IANNUZZI: I do not intend to in any fashion disregard --

THE COURT: You have done it.

MR. IANNUZZI: I was stating the grounds.

THE COURT: That is not the ground.

MR. IANNUZZI: It ismy ground. I am making an objection with a ground.

THE COURT: That's argument. That is not the ground.

MR. IANNUZZI: I indicated that this was a translation and that this is the reason I am objecting, that it was a translation, and the man said he didn't understand.

I most respectfully am sorry if I do not gesticulate in the fashion your Honor wishes. I am stating a ground.

THE COURT: Seat the jury.

(Jury present.)

THE COURT: May I have the last question?

(Question read.)

MR. IANNUZZI: Objection, no proper foundation.

THE COURT: Did I rule on that? I ruled on that.

MR. IANNUZZI: I think the question is being asked of the witness again.

THE COURT: Next question.

(Question read.)

THE COURT: I will allow you to answer it.

THE WITNESS: That was based on the listening of other tapes, whether they were in French, English or reading the Italian translation and my own observations in Rome which confirmed certain facts that were in those conversations.

THE COURT: Did I hear you say your own observations in Rome?

THE WITNESS: As I proceeded to Rome.

MR. IANNUZZI: I object to those and I ask that those be stricken, sir.

THE COURT: Denied.

MR. PUCCIO: No further questions.

THE COURT: Cross-examination.

RECROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. Sauve, when you indicate that you made observations in Rome, you didn't make any observations of Mr. Cotroni in Rome, didyou?

A No, I did not.

Q Mr. Cotroni was not in Rome?

A No, he was not.

Q When you indicate that you have an opinion concerning narcotics, as a result of the conversation of the 15th, that's your interpretation of what was said; is that right?

A I have been listening to numerous tapes, sir --

(continued next page)

Q The question is, your answer in reference to this conversation is your interpretation of the conversation, is that correct?

A I don't believe I can be expected to memorize all the transactions.

MR. IANNUZZI: May I ask the answer be stricken as not responsive.

THE COURT: Strike it out as not responsive.

Q This, sir, is your interpretation of the conversation, is that correct?

A Yes.

Q It is your interpretation of the conversation despite the fact as you testified neither Mr. Orsini nor Mr. Mendolia or Mr. Cotroni ever said that the wine was going to be put in the car?

A It was my interpretation on this one conversation and others.

Q That's what I'm asking you about, this one conversation that Mr. Puccio was asking you about, correct?

A That is correct.

CROSS-EXAMINATION

BY MR. KLAR:

Q Mr. Sauve, any reference to this particular conversation by Mr. Orsini to Mr. Dasti?

A (No response.)

MR. KLAR: I will rephrase it.

Q Did Mr. Orsini make a reference during the course of the conversation about Mr. Dasti?

A I couldn't tell you, I don't know.

Q You have the transcript in front of you -- or you had it a moment ago, do you recall?

THE COURT: You are talking about the log?

MR. KLAR: The log, yes.

THE COURT: The log is not a transcript.

Exhibit Number, please.

MR.PUCCIO: There is no -- I'm sorry, it was referred to in the original French during the trial by Mr. Iannuzzi. It is Vegas 9, page 13.

THE CLERK: 17, your Honor.

THE COURT: The Clerk said 17.

MR. PUCCIO: That is it.

Q Any reference in any particular log --

THE COURT: You had better mark that.

MR. PUCCIO: This is a translation of page 13 of Vegas 9 which is Exhibit 17.

THE CLERK: This will be 17-A.

THE COURT: Is this the first one out of 17?

THE CLERK: Yes, your Honor.

THE COURT: This is a translation of the French log, you say?

MR. PUCCIO: Yes. The French log, right.

THE CLERK: So marked as Government Exhibit 17-A for Identification.

(So marked.)

Q Do you see any reference there to Mr. Dasti?

A I haven't finished reading it yet.

Q I'm sorry.

A Mr. Dasti, no.

Q As a matter of fact, Mr. Dasti's name doesn't appear in that particular log, does it?

A No, it doesn't appear.

THE COURT: Anything further?

MR. KLAR: I have no further questions.

MR. PUCCIO: Nothing more, your Honor.

THE COURT: Anything further?

MR. IANNUZZI: Yes, your Honor.

CROSS - EXAMINATION

BY MR. IANNUZZI:

Q By the way, Mr. Sauve, in the City of Montreal, are you familiar with an importer of wine by the name of Raffaelo Esposito?

A No, I am not.

Q I would assume therefore you would not know he is a notary in addition?

A No, I am not aware.

Q By the way, concerning this conversation about which you made your interpretation, was there ever any arrest made as a result of this alleged narcotics transaction?

A No, there wasn't.

Q And an arrest of Mr. Orsini in reference to this wine?

A No.

Q An arrest of Mr. Mendolia in connection with this wine?

A No.

Q An arrest of Mr. Cotroni in connection with this wine?

A No.

Q An arrest of Mr. Mendolia in connection with this Ferrari?

A No.

Q An arrest of Mr. Orsini in reference to this Ferrari?

A There was a Ferrari seized afterwards.

Q Was there an arrest of Mr. Orsini in connection with this Ferrari?

A No.

Q Was there an arrest of Mr. Orsini in reference to the Ferrari seized?

A No.

Q Was there an arrest of Mr. Orsini in reference to the Ferrari seized?

A No.

Q Was there an arrest of Mr. Cotroni in reference to the Ferrari seized?

A No, sir.

Q That Ferrari that was seized has nothing to do with either of those men or any of them?

A If I may refer to the transcript, yes.

Q If you refer to the fact of the police reference of the City of Montreal, no, is that correct?

A That is correct.

MR. IANNUZZI: I have no further questions.

THE COURT: Anything else?

MR. PUCCIO: Nothing further.

THE COURT: You may step down.

At this point, I would like to charge the jury that the testimony concerning wine and if you credit Mr. Sauve's testimony, the use of the word as a code word has no relationship to this case except if you

credit the testimony of the manner of doing business and the use of familiar names as code words and nothing else.

The Government rests?

THE COURT: I have one further witness, Mr. Fitzgerald.

B E N J A M I N F I T Z G E R A L D , a witness called on behalf of the United States of America, was sworn by the Clerk of the Court and testified as follows:

MR. PUCCIO: May I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. PUCCIO:

Q By whom are you employed?

A Drug Enforcement Administration.

Q For how long have you been so employed?

A Well, that organization changed its name --

Q By the DEA and its predecessors?

A Since December of 1947.

Q You are employed by the Federal Bureau of Narcotics and the Bureau of Narcotics and Dangerous Drugs?

A Yes.

Q What was your present position with the Drug Enforcement Administration?

A Yes.

Q What was your present position with the Drug Enforcement Administration?

A Group Supervisor with the Conspiracy Squad in the Southern District of New York.

Q Had you been involved over the years in investigations concerning both domestic and international drug smuggling?

A Yes.

Q Now, have you been involved in many investigations since 1947?

A Yes.

Q Would you be able to tell us if it is over 100 investigations?

A Yes.

Q Have you become familiar with the jargon that is used in a narcotics business?

A Yes.

Q Now, is the word "suits" familiar to you as a code word or jargon as used in the narcotics business?

A Yes.

Q What does the word "suits" mean in the narcotics business?

A Usually it means a unit of a particular drug,

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depending upon at what level of the traffic we are in.

Conversationally, if we are in the kilo traffic and the buyer and seller involved mention a suit, it would be a kilogram of heroin or cocaine, whatever the narcotics would be.

Q If they were lower echelon dealers, what would it be?

A If the units were half kilos of heroin or cocaine then the suit at that particular level of the traffic would mean in code a half kilogram of cocaine or heroin.

Q Are you familiar with the word shirts as a code word in the narcotics business?

A Yes.

Q What does the word shirts mean in the narcotics business?

A Interchangeable with suits.

Q It also means a unit of narcotics?

A Yes.

Q Whether heroin or cocaine?

A That's right.

MR. PUCCIO: No further questions.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. Fitzgerald, when people involved in the narcotics business are smuggling things they have a tendency

not to use the specific reference but to shade or hide their meaning, is that correct?

A That's right.

Q And someone could refer to let's say heroin as suits?

A That's right.

Q Is that correct?

A Yes.

Q And depending on what they are talking about it could be kilos, could be a half kilo, could be just about any weight depending on what they are dealing with?

A That is usually a pre-understanding.

Q Among those people?

A The buyer and seller.

Q In other words, there isn't a specific place where one could turn and say a suit means this, a kilo of something, whereas a shirt would mean a half kilo, and a pair of knickers would be a half pound? There isn't any specific place where you can determine that, is there?

A No, it is an understanding between the parties.

Q In other words, it is an understanding between themselves, not an understanding that is known throughout the narcotics business or throughout the world?

A That is not true, either, because the term suits

and shirts are used so universally in the narcotics traffic that more or less it has a common meaning.

Q Are there not other words that are used?

A Infrequently, but those two particular words are used most usually.

Q There are a lot of words one can use if one is trying to hide something?

A With pre-arrangements, if it's elephants, it would be elephants.

Q The only way you can determine it is to make an assumption from your experience that they must be talking about heroin in this conversation?

A I would understand from the general context of the conversation.

Q I understand. Therefore, without knowing the understanding and without knowing the context of the situation or the conversation, you cannot tell that this words must mean narcotics as opposed to actually meaning a suit, is that correct?

A Not really, because I can tell.

Q Without listening to the conversation?

A I can tell nothing without listening.

Q Of course.

A You are talking about a conversation that I hear

and there are code words in the conversation and you are saying I don't know what they mean and I am saying --

Q I am not saying that. I am asking, if you listen to a conversation and you have someone ask you a question about shirts and make a determination that they were talking about shirts or suits or not narcotics without having further information or listening to the conversation?

A Yes, I can.

Q In other words, all you have to do is hear the word shirts or suits and you know it's narcotics?

A If we are talking about people in the narcotics traffic, that is right.

Q First you have to know the people are dealing with narcotics then you can make your assumption?

A Usually.

Q If you don't know the people are in narcotics, in the narcotics business, and talking about shirts and suits, maybe they are not talking about narcotics but shirts and suits, correct?

A Well, if they are suspects in narcotics traffic and they are talking about shirts and suits, they are talking about narcotics.

(Continued on next page.)

Q In other words, you can anticipate someone talking about suits and -- withdrawn.

Is it your testimony that everytime a person uses the words suits and shirts you decide they are suspects and that they are talking about narcotics?

A No. For instance the narcotic traffickers talking to a habadasher and talking about shirts and suits, then I can maybe assume he may be talking about shirts and suits.

Q How about if someone is in the business of say renting night clubs and restaurants and talking about rent?

A I assume he is talking about rent.

Q How about gamblers, do they use code words?

A I don't know. I don't have much expertise in gambling.

Q Well, gambling on occasion is illegal, you are aware of that?

A Yes.

Q And would it be within your understanding as an investigator if people were talking about illegal things --

A No.

Q I didn't even finish the question yet.

A I thought you had.

Q Let me start over for you.

Would you, as a trained investigator, understand that gamblers in talking about gambling would do the same thing, that is attempt to hide their meaning?

A I don't know what the gamblers do.

Q What if gamblers talk about shirts and suits?

A I assume from general knowledge that gamblers would do things in a clandestine way as other people. I know about cases where numbers takers when caught attempt to eat the slips and things like that. And they write down codes, gamblers.

Q How about when talking on the phone, do they attempt to do the same thing as people in the other illegal businesses?

A I assume if they are in clandestine traffic, they attempt to secret their activity.

Q If the gambler is talking about suits and shirts, do you know what that means?

A No. I wouldn't know what a gambler means if talking about suits and shirts -- I mean suits and shirts.

Q Clothing?

A Yes.

MR. IANNUZZI: I have no further questions.

MR. KLAR: No questions.

MR. PUCCIO: No further questions.

The Government rests, your Honor.

THE COURT: The jury is excused. We will suspend at this time. I ask you to return tomorrow at 9:30.

Now, tomorrow I must attend a Judge's luncheon meeting. I am explaining this to you so you don't think this is just golf for a couple of hours. I can't blame people for thinking that when a Judge takes more than a half hour for lunch. I am the Chief Judge of this Court and I must attend a meeting with other Chief Judges in the Circuit. This appointment was set a long time ago and there is no way I can change it. It is going to be a day in which we are going to take a long recess. I understand I am scheduled to be there at 12:00 o'clock. I understand it could go for two and a half or even three hours. At least I want to start promptly tomorrow at 9:30. Then I may askyou to take a long recess, a long lunch hour, and come back here for maybe another hour and a half or two. You may think that is wasted time but trial time is so valuable I don't want to give up the whole day because of that meeting. I am sorry I have to do it this way.

MR. PUCCIO: Could we approach the bench?

THE COURT: I haven't got time, I have another meeting at 4:30.

MR. PUCCIO: It was on the time question.

THE COURT: Suppose you go into the jury room and I will ask you to come back. Don't leave yet.

(The jury left the courtroom.)

THE COURT: HAs the original been filed?

THE CLERK: Yes, your Honor.

THE COURT: What is it?

MR. PUCCIO: I am wondering in light of the fact that you indicated to Mr. Iannuzzi that you might give him extensive time --

THE COURT: He's got two people from Mexico here.

MR. PUCCIO: As far as Cordvano and Altamura are concerned, I thought the Court was going to give Mr. Iannuzzi some time. I have a meeting which Mr. Trager asked me to ask you if I could go to for an hour.

THE COURT: Tomorrow morning?

MR. PUCCIO: Yes.

MR. IANNUZZI: Put it on the afternoon and we will take the afternoon off.

THE COURT: Ask Mrs. May to check my time schedule.

MR. PUCCIO: The only thing that runs through my mind is you indicated you are going to givethe defense extensive time to prepare --

MR. IANNUZZI: Instead of tomorrow morning, take off the entire afternoon. It would be easier.

THE COURT: The meeting starts at 2:15. Lunch is at 2:00 o'clock.

MR. PUCCIO: May I just check?

THE COURT: I may just continue this over to thursday. But they have two witnesses from Mexico.

MR. IANNUZZI: Perhaps tomorrow morning we can handle certain witnesses and the meeting can be after that. I am not dictating, of course, I suggest it most respectfully.

MR. PUCCIO: That is at ten. The only reason I raise it is because if the defense is going to be given additional time to consider the Altamura testimony I though we could fit that in.

(Continued on next page)

/LH

(Out of the hearing of the jury.)

THE COURT: The only question is whether I should adjourn and then continue the case until Thursday. The only reason I have the just come in until 11:30 tomorrow is because, well, to hear these two witnesses from Mexico.

MR. PUCCIO: That would seem the logical thing to do.

THE COURT: Or if they can be until Thursday and save the jury from coming in.

MR. IANNUZZI: They were scheduled to leave at 5:00 o'clock today.

THE COURT: Well, they cannot leave at 5:00 today.

Can they leave at 5:00 o'clock Thursday?

MR. IANNUZZI: I don't think so.

THE COURT: Mr. Iannuzzi has been so cooperative that I wanted to extend the same cooperativeness to him.

MR. IANNUZZI: I have tried my best.

THE COURT: You have been one of the most respectable disrespectable lawyers I have had.

You say it in a very nice way but you are disruptive, repetitious and do not follow directions and you do not care about determinations made during

the trial. You just go on your own way and each time you do it you say, I am sorry and when the objection is sustained you do the same thing over and over again.

MR. IANNUZZI: I am doing the best I can and I am sorry that I cannot be as good as I should.

THE COURT: You want to get everything before the jury and you make the most beautiful speeches. That is all right if you want to convince your client but you will never convince me.

MR. PUCCIO: Could we possible and again maybe I have my own schedule in mind, could we possibly, but I also have the jury in mind, maybe they would prefer to come in at 9:30 and to come in when your Honor returns from the conference and then sit late.

THE COURT: Listen, would you believe it that I have to get back here at 5:15 today for another appointment?

They will come in in the morning at 9:30 and I may go until 11:30 and then adjourn for the day.

We will have a short day tomorrow. That is the only way I can figure it out.

Seat the jury.

(The jury entered the courtroom at 4:35 p.m.)

THE COURT: Tomorrow will be a very short day. Some witnesses came from a far distance and

we want to accomodate them so that they can get back.

We will start at 9:30 and we will suspend about 11:45 in the morning. In the meantime do not read any newspapers.

That limitation continues, regretfully. I am sorry I have to do it but it won't be too much longer.

Do not talk about the case.

Try to get in here early enough so that we can start promptly at 9:30.

All right.

THE FOREMAN: And then we will be finished at 11:45?

THE COURT: You will be finished at 11:45 because I will get back too late. There's no sense of having you wait around.

The jury is excused.

(The jury withdrew at 4:36 p.m.)

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U.S. DISTRICT COURT E.D. N.Y.
JAN 27 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 73-CR-898

FRANK COTRONI, FRANK DASTI, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

January 15, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

and a jury

MICHAEL PICOZZI
Official Court Reporter

I hereby certify that the foregoing is a true and accurate transcript of the proceedings.

Official Court Reporter
U. S. District Court

A 2470

Appearances:

A

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

JOHN N. IANNUZZI, ESQ.
Attorney for Defendant Cotroni

MICHAEL KLAR, ESQ.
Attorney for Defendant Dasti

MR. PUCCIO: I would like to put something on the record before the jury comes in.

Your Honor, this pertains to the cross-examination of Mr. Baril which took place yesterday. I am referring to Mr. Klar's cross-examination. Bu the way, you might note that Mr. Baril's name is spelled wrong, it is spelled B-a-r-r-a-l, and it should be B-a-r-i-l. I don't think it matters much. His name is spelled correctly in the hearing, though.

THE COURT: I had B-a-r-r-i-l.

MR. IANNUZZI: I have it as B-a-r --

MR. PUCCIO: In Mr. Klar's cross-examination:

"You indicated before that you knew that Mr. Dasti was involved in the narcotic transaction, is that right?

"Answer: Yes, sir.

"Question: Did you ever arrest him for a narcotics violation?

"Answer: No.

"Question: Anybody in your Squad ever arrest him for a narcotics violation?

"Answer: No, sir.

"Question: Anybody in the Montreal Police Force ever arrest him for a narcotics violation, to your knowledge?

"Answer: To my knowledge, no, sir.

"Question: Did you ever see Mr. Dasti's arrest record?

"Answer: No.

"Question: Are there any narcotic violations on there?

"Answer: To the -- "

Well, your Honor, Mr. Dasti is serving, I believe, a twenty year sentence right now for violation of the United States narcotic laws. It is one thing not to let the Government bring this out if the defendant doesn't take the stand, and it's another thing to have --

THE COURT: Mr. Dasti is serving a twenty-year narcotics sentence?

MR. PUCCIO: That's right.

MR. KLAR: I think I said up to that time.

MR. PUCCIO: The witness was starting to answer, and then you said:

"Question: As of March 17, 1971."

I submit this is creating a false impression, because there was an exchange, and before Mr. Baril indicated --

THE COURT: I am not going to allow it.

THE PUCCIO: I want to put on the record that in

light of Mr. Dasti's present status of a conviction in narcotics, the defense got the best of the exchange.

THE COURT: It happened all along. That's why I talk about the manner of cross-examination. I saw Mr. Iannuzzi ask a question, I have forgotten what it was, but I think it was: "Did you ever know Mr. Cotroni before a certain date,"and he was about to answer, "Of course we do," and then he said, "With reference to narcotics."

MR. PUCCIO: With reference to cocaine.

MR. IANNUZZI: That is the question I asked.

THE COURT: When I talk about fair examination --

MR. IANNUZZI: Absolutely, Judge.

THE COURT: You have brought up any number of matters on cross-examination that the prosecutor never under any theory would bring into this case, and at times I questioned the right of the Government to move right in and give the full story.

Mr. Puccio has exercised restraint on these matters, and the matter I keep in mind was with regard to the wine.

MR. IANNUZZI: Yes.

THE COURT: And you were the one that brought the subject up. And you tried to limit it. And I tried to limit it. I think all Mr. Puccio is saying is, we are

coming close to the end of the trial, and it may be too late to forewarn you, but he is not going to exercise, or can't promise he will exercise the same restraint on everything.

MR. PUCCIO: Also, I am trying to make a point that in the event of a conviction of Mr. Dasti, the issue is later on that Mr. Baril made a highly prejudicial statement, that the defense cross-examination was trying to create a false impression, and I believe they did get the better of that exchange on cross-examination.

MR. IANNUZZI: I suggest --

THE COURT: Seat the jury.

MR. IANNUZZI: Motions, Judge?

THE COURT: Oh, yes.

MR. IANNUZZI: On behalf of the defendant Cotroni if it please the Court, I would move again and renew the motions to suppress any illegally obtained evidence particularly the wiretaps in this case, on the ground it was illegally obtained.

I suggest that both in reference to Canadian law, and also that the U. S. telecommunication network were used, and I believe there are more strict and stringent regulations in Washington concerning our network, and notwithstanding the fact these tapes were

taken in Canada, they are illegal.

I suggest the same, because if we had taken these --

THE COURT: I don't want the reasons, just the grounds.

MR. IANNUZZI: Yes, your Honor. On the ground that the tapes are subject to Title 18, I think 2510, et cetera, and that is to say -- Title 3 -- of our law relative to electronic surveillance. I suggest further that the wiretaps are subject to Canadian law, and on both grounds are illegal, and I say they should be suppressed.

THE COURT: Motion denied.

MR. IANNUZZI: I move further with reference to the electronic surveillance on the grounds the defense has not been permitted sufficient opportunity to have the additional tapes that have been taken which might have in fact been used in some fashion by the defense, which might have been exculpatory, and aided in explanation, I suggest these were unavailable, the Canadian Government indicated they would not supply them, and supplied what they selected, and destroyed the rest. I suggest the defendant has been gravely prejudiced by such lack of access to the said tapes.

THE COURT: Motion denied.

MR. IANNUZZI: I would move to suppress the said

tapes on the ground even the Court should have made a determination in camera of the said tapes to determine, just as the Court did determine in one subsequent tape presented --

THE COURT: Just the grounds, Mr. Iannuzzi, please.

MR. IANNUZZI: That the Court should have taken the tapes in camera, and all of the logs in camera, to determine whether or not counsel and the defense should be permitted to have the same.

THE COURT: Denied. Next.

MR. IANNUZZI: I move to strike all testimony relative to Mr. Stewart on the additional Conspiracy or alleged continuing Conspiracy, on the grounds that such was outside of the indictment. It should not be part of this case.

THE COURT: Denied.

MR. IANNUZZI: I move against the evidence, and move to strike the evidence with reference to Mr. Stewart on the grounds that information obtained was not sufficiently supplied to the defense until the moment before Mr. Stewart was to take the stand, and I move that such was prejudicial, particularly since the United States Government has its information well before, and it knew that the evidence existed, and was not unknown,

and not an unknown person --

THE COURT: Denied.

MR. IANNUZZI: I would move to strike all evidence relative to heroin transactions and other transactions that are outside of the indictment herein, particularly those that have been testified to concerning Altamura and Stewart and Bynum, et cetera.

THE COURT: Motion denied.

I direct you to submit a Request to Charge with reference to how the jury should treat that evidence concerning heroin transactions, if you wish it charged.

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(continued on next page.)

MR. IANNUZZI: I would move for a directed verdict of acquittal on the ground the Government has failed to prove a prima facie case, particularly in light of all that evidence that should be stricken.

THE COURT: Denied.

MR. IANNUZZI: I renew all motions heretofore made --

THE COURT: All motions are denied.

MR. IANNUZZI: And I renew all of the other motions made during the trial.

THE COURT: All the motions made during the trial are renewed and denied.

Anything further?

MR. IANNUZZI: I don't think so.

THE COURT: If you think of anything, let me know.

All right, Mr. Klar.

MR. KLAR: I am going to join in the various motions made by Mr. Iannuzzi.

THE COURT: I will consider all the motions made by Mr. Iannuzzi are made by you.

MR. KLAR: Thank you.

I move, under Rule 29, for a judgment of acquittal. The Government has not sustained its burden and established with regard to Mr. Dasti that he participated i bringing in cocaine to the United States, and failed to

establish the fact that he -- in furtherance of the Conspiracy -- was a part of the Conspiracy, facilitated the transaction, concealed, bought or sold cocaine. There was no showing that any cocaine has been delivered, sold, or -- unless we take the word of one witness, whose testimony is crucial to tie up the loose ends of the case, and in view of his inconsistent statement, and in view of the Government's own witness, the Chemist, whose description of the substance differs from the main witness that the Government put forth, I make the motion under Rule 29.

THE COURT: Denied.

MR. IANNUZZI: I would like to make one further motion to strike the wiretap evidence on the ground -- and strike the logs from the record -- on the ground that use by the Canadian Government of the logs, having destroyed the tapes, is improper, and these are not conversations, but they are testimony of a policeman of his own synopsis, and I suggest it is improper, the tapes should have been presented in their original form.

THE COURT: Motion denied.

MR. PUCCIO: Your Honor, I have one application to make. I understand there will be some defense witnesses called this morning. I have no idea who they are going to be. But rather than interrupt this morning, I

would ask that counsel be directed to have the witnesses remain, and when we break at a quarter to 12:00, I will indicate to counsel --

THE COURT: Let's not talk about problems that didn't come up yet.

MR. PUCCIO: The witnesses are from out of the country, and after they leave the stand, they will go back.

THE COURT: Do you want me to direct the Marshals to keep them in custody?

MR. PUCCIO: No. I would like to ask counsel to let them remain.

THE COURT: Let's not waste any time. I will direct the witnesses to remain at least until the end of the Court day.

MR. IANNUZZI: I will go along with that.

THE COURT: If there is anything you want, I will be back at 3:30.

MR. PUCCIO: I may not want to ask any questions.

THE COURT: All right.

MR. IANNUZZI: I would ask in reference to Mr. Cordovano and Mr. Altamura if the Government was making any arrangements --

MR. PUCCIO: Your Honor signed a writ, and I

assume Mr. Cordovano will be here today. Mr. Altamura, I had a subpoena --

THE COURT: How about Mr. Catania?

MR. PUCCIO: He was in yesterday because counsel wanted him on, but I didn't bring him in today.

THE COURT: Tomorrow?

MR. PUCCIO: Yes. He is scheduled for tomorrow.

(The jury is in the jury box.)

THE COURT: Good morning, ladies and gentlemen. I am sorry we are slightly delayed. I think we are ready now.

Mr. Iannuzzi, will you please call your first witness.

MR. IANNUZZI: Yes, your Honor.

(Pause.)

THE COURT: Are you calling the first witness?

MR. IANNUZZI: Yes, they are coming from your witness room, sir.

THE COURT: Mrs. Clancey, have you been Sworn?

MRS. CLANCEY: I have been Sworn previously.

H E R M I N I A H E R N A N D E Z D E V A S Q U E Z , a witness called on behalf of the defense, was Sworn, through the Spanish Interpreter Lybia Clancey, by the Clerk, and testified as follows:

MR. IANNUZZI: May I proceed, sir?

THE COURT: Please.

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mrs. Vasquez, where do you live?

A In Mexico City.

Q In addition to living in Mexico City, do you have another residence?

A Yes, in Acapulco.

Q Do you work, Mrs. Vasquez?

A No.

Q What kind of work does your husband do?

A He is an engineer.

Q Do you know Mr. Cotroni, who is seated at that table?

A I don't remember him.

Q Did there come a time in 1970-'71 when you rented your house to Mr. Cotroni?

A Yes. I rented one to him.

THE COURT: Would you like to step down and get a closer look to see if you recognize Mr. Cotroni?

A The one who got up?

THE COURT: Yes. You can step down if you wish.

(Witness steps down.)

THE COURT: Don't talk to him.

A No, I don't think that is he. But I actually don't remember well. That is because it's been four years now.

Q Was the house in Acapulco rented on two occasions?

A Yes.

Q Would that be in the winter of 1969-70, and also in the winter of 1970-71?

A Yes.

Q Was it rented to the same people on those two occasions?

A Yes.

Q And the people to whom the house was rented were the Cotroni's from Canada, the Cotroni family from Canada?

A Well, actually we didn't know, because a man who acted as the intermediary was the man who rented it.

Q Who was the man who acted as the intermediary?

A A man by the name of Catania.

Q The first time that the house was rented, for how long was the house rented?

A For about the same time.

Q Was there any difficulty in the rental of the house the first time?

A Not the first time.

Q Was there difficulty with the house the second time?

A Yes.

Q What was the difficulty?

MR. PUCCIO: I object to the form of the question.

THE COURT: Sustained as to form.

Q In connection with the second time that the house was rented, did Mr. Catania pay you any money for the rental of the house in advance?

A Not to me, to my husband. But he didn't give him money.

Q Did he give a check?

A Yes, but it was rejected.

(continued on next page.)

DIRECT EXAMINATION

BY MR. IANNUZZI: (Cont.)

Q It was rejected by the bank?

A Yes.

Q And did there come a time when you went to see Mr. Catania again concerning this bounced check?

A I never go to see the people. It's always my husband who goes, sometimes I go along with him but I stay outside.

THE COURT: Miss Hernandez de Vasquez, did you see the check that was returned from the bank?

THE WITNESS: No, because you know my husband he never lets me participate in his accounts. I just learned of it because he told me about it.

Q Do you have a check with you that was givento you or your husband --

MR. PUCCIO: I will object unless Mr. Vasquez is also --

THE COURT: The next question is proper: Do you have the check that was returned from the bank with you?

THE WITNESS: No, no, I only have the lease.

Q Was a check returned a second time?

MR. PUCCIO: Objection.

THE COURT: Do you know, did you see it, or are you telling us what your husband told you?

THE WITNESS: What my husband told me.

MR. PUCCIO: I object, your Honor, and I move to strike.

THE COURT: Objection sustained.

BY MR. IANNUZZI:

Q Did you see the check come back a second time?

MR. PUCCIO: Objection, that has not been proven.

THE COURT: Sustained.

Did the check come back a second time?

MR. IANNUZZI: All right.

THE WITNESS: Yes, sir.

THE COURT: Did you see it?

THE WITNESS: My husband tells me all about his things.

MR. PUCCIO: Objection.

THE COURT: Is there a motion to strike?

MR. PUCCIO: Yes.

THE COURT: Strike it out. The jury disregard it. It's pure hearsay.

BY MR. IANNUZZI:

Q Did there come a time when you had to go to Acapulco concerning the house in the season 1971?

A Yes, because days went by and the man didn't pay.

MR. PUCCIO: I am going to move to strike everything.

THE COURT: Strike it out as non-responsive.

Q Did you have to go to Acapulco --

THE COURT: Did you go to Acapulco?

THE WITNESS: Yes; my husband, my daughter and myself.

Q Did you all go together?

A Yes.

Q And does your daughter speak some English?

A A little bit.

Q During the conversation -- withdrawn.

THE COURT: Objection -- go ahead.

Q Did you go to the house in Acapulco?

A Yes.

Q And at that time did you and your husband -- withdrawn.

Did you speak with the servant in the house concerning whether he was paid money --

MR. PUCCIO: I am going to object, your Honor.

THE COURT: Don't answer the question. I want you to complete it.

MR. IANNUZZI: Withdrawn.

Q Did you determine whether the money had been paid --

MR. PUCCIO: I object --

Q -- to anyone on your behalf?

THE COURT: Sustained as to form.

Conversation and I want the parties identified.

Q Do you have a servant in the house that works in Acapulco?

A A butler.

Q Did you determine whether the butler had been paid by Mr. Cotroni?

MR. PUCCIO: I object.

THE COURT: By Mr. Cotroni?

MR. IANNUZZI: Yes.

MR. PUCCIO: I object, your Honor.

THE COURT: Objection sustained.

Q Did you determine whether the butler had been paid the money for the house?

MR. PUCCIO: I object.

Q Did you speak to the butler?

THE COURT: Just yes or no.

THE WITNESS: Yes, my husband rang and he didn't want to go in.

Q Did the butler come to the door?

A Yes.

Q Did you speak to the butler with your husband?

A Yes.

Q Did you ask him if he had money that had been paid for the house --

MR. PUCCIO: I object, your Honor.

THE COURT: I want the full question.

(Question read.)

THE COURT: Objection sustained.

It's immaterial.

Q After speaking to the butler did you speak to Mr. Cotroni?

MR. PUCCIO: I object.

THE COURT: I will allow it; yes or no?

Q Did you speak to Mr. Cotroni after speaking to the butler?

A Yes.

Q And was Mr. Cotroni asked about the rent that had not been paid?

MR. PUCCIO: Your Honor, I object as leading.

THE COURT: Objection sustained.

MR. IANNUZZI: Is it on the basis of leading?

THE COURT: It's pure hearsay.

MR. IANNUZZI: This is conversation that she had with Mr. Cotroni.

THE COURT: I know it is.

MR. IANNUZZI: I suggest, sir, that he is a defendant. It's an admission.

MR. PUCCIO: On those grounds I object.

THE COURT: An admission?

MR. PUCCIO: I don't want to argue it in front of the jury.

THE COURT: Would you like to argue it outside the hearing of the jury?

The jury may be excused.

(Jury leaves courtroom.)

MR. PUCCIO: May we excuse the witness?

THE COURT: The witness can't speak English.

MR. IANNUZZI: I suggest, sir, if she had a conversation with Mr. Cotroni, that she should be permitted to testify as to the events that occurred, including the conversation.

THE COURT: Any other ground that you want to put on the record that this witness is going to testify to that Mr. Cotroni said, so you can make a complete record for review?

DIRECT EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

MR. IANNUZZI: Just to the effect -- it's not so much what he said but what occurred.

THE COURT: Tell us what the testimony will be. I don't want any translation.

THE INTERPRETER: I was explaining this does not concern her.

MR. IANNUZZI: I would like to get into evidence that she went to the house and had a conversation with Cotroni.

THE COURT: And what did Cotroni say?

MR. IANNUZZI: The rent and the payment of the rent.

THE COURT: What did Cotroni say? You said it's an admission. What is the admission?

MR. IANNUZZI: No, no, just the conversation that the rent had not been paid.

THE COURT: Let us know what the admission was.

MR. IANNUZZI: When I say "admission" I suggest being a statement of a defendant is not hearsay as her husband's statement but one of the defendant. I think she's in a position to testify as to

conversation with the defendant.

THE COURT: What he said?

MR. IANNUZZI: Yes.

THE COURT: That's interesting. Any cases to support that?

MR. IANNUZZI: I don't have them offhand.

THE COURT: I wouldn't find them either.

MR. IANNUZZI: If Mr. Catania could testify as to what Mr. Cotroni said I don't see why another witness can't do the same thing.

THE COURT: Then you should ask Mr. Boitel to look that up for you, if he writes your brief for you, he shouldn't charge you more than a dollor for that.

MR. IANNUZZI: I realize what the rule is, but I suggest that someone has to change that rule.

THE COURT: Is this another rule that you are going to change? Congress just adopted new rules of evidence. You should have gotten that in before the rules were adopted. A defendant could just sit by and have someone tell the jury everything he said. That would be fine. That is fairness.

MR. IANNUZZI: It's not fairness when somebody can say something to his disfavor --

THE COURT: Now you also quoted the law.

MR. IANNUZZI: I know what the law is. I say it's wrong.

THE COURT: Why try to offer it here?

MR. IANNUZZI: It has to be done in order to have an Appellate review.

THE COURT: You could have forewarned me what was going to happen. If the government did this you would be wringing your hands.

MR. IANNUZZI: They would probably get it in because they have had an opportunity to get an awful lot of material in that I suggest is improper.

THE COURT: I already ruled it's proper. That is not the kind of evidence that I am talking about. I am talking about the kind that is inadmissible that you are trying to get in before the Court has an opportunity to rule on it. That's proper trial tactics. That is called logistics.

MR. IANNUZZI: It's the movement of material I don't know what it has to do with this.

THE COURT: It's not the tactics --

MR. IANNUZZI: It's the science of moving material.

THE COURT: I thought it was the science of

war.

MR. IANNUZZI: Just equipment.

THE COURT: All right, strike that out and I will use tactics instead and then I will look that up.

MR. IANNUZZI: We have one here, Judge.

THE COURT: Would you mind looking logistics up? Anything else you are going to ask this woman?

MR. IANNUZZI: I could ask what occurred without conversation?

THE COURT: Only if it's material.

MR. PUCCIO: I object to this.

THE COURT: Tell me how it's material.

MR. IANNUZZI: It's material to the extent that Mr. Catania who received money -- subject to connection -- Mr. Catania received money and he said he paid this money.

THE COURT: What will she testify occurred?

MR. IANNUZZI: That Mr. Cotroni paid the full amount of the lease at that time completely and there was never any money given from Mr. Catania and Mr. Catania says he had paid the money.

THE COURT: That is all that occurred, Mr. Cotroni told her this?

2 fls.

MR. IANNUZZI: No, no, she saw it.

THE COURT: How does she know that? She saw what?

MR. IANNUZZI: The payment by Cotroni. She's aware of the fact --

THE COURT: Cotroni then and there paid the rent, the full amount?

MR. IANNUZZI: Yes.

THE COURT: I will let her testify only to that. Make sure that is what she's going to testify to?

MR. IANNUZZI: And also Mr. Catania --

THE COURT: How does she know it's the full rent?

MR. IANNUZZI: She has the lease, she knows the amount and it was paid in front of her.

THE COURT: I will allow that.

(Continued on next page)

MR. PUCCIO: I have an application. This woman -- I didn't object initially, because the woman obviously is having a little difficulty communicating with Mr. Iannuzzi. I thought there was some testimony that was going to be introduced, which was not hearsay. I would object to this testimony unless the husband is going to be here, because this woman is not a witness to anything thus far.

THE COURT: Mr. Puccio --

MR. PUCCIO: If she is testifying to documents which we don't have, I submit it is inadmissible unless he can show why the documents cannot be found.

THE COURT: "Logistics: That branch of the military art which embraces the details of transporting, quartering and supply of troops in military operations."

MR. IANNUZZI: Yes, sir.

THE COURT: Well, maybe my use was imperfect. I thought it was the science of war, and that is only a branch of the science of war.

If I am reversed, I won't be reversed for that.

MR. IANNUZZI: No, sir.

MR. PUCCIO: I would ask for an offer of proof. I would ask the defendant to indicate at this time whether or not the husband of this woman is going to be called.

THE COURT: That is immaterial. I will allow

her to testify that Mr. Cotroni paid her X dollars, period.

Of all the proof that was offered here, that is all I find material on this theory that that is inconsistent with Mr. Catania's statement that he paid part of the rent for the second year, before they took occupancy, or he paid part of the rent to the landlord.

MR. PUCCIO: What if Cotroni paid the other part, how is that inconsistent?

THE COURT: Mr. Puccio, I said I will only allow the testimony of this witness that Cotroni paid her at that time the full amount of the rent, the amount stated in the lease. That would be inconsistent with what Mr. Catania said.

MR. PUCCIO: She is going to testify that Cotroni--

THE COURT: Paid all of it at that time.

MR. IANNUZZI: That is right.

THE COURT: Yes.

MR. IANNUZZI: Yes, I understand that.

THE COURT: Go ahead.

MR. IANNUZZI: Also, the woman will testify that -- Catania testified that the people offered him a commission, which he refused. This woman will testify that is not true, and in fact he was very, very interested in, and asked for the commission.

#3 THE COURT: That is quite immaterial, and first you will have to establish, and do that now, whether she was present when Catania asked for a commission, or whether it was her husband who told her.

MR. IANNUZZI: Yes, sir.

May I ask through the Interpreter she has records with her, so we can look at them now?

MR. PUCCIO: I would like to see them now.

MR. IANNUZZI: We both can look at them.

MR. PUCCIO: Your honor, I would like to make one further point:

There has been some testimony already by this woman, Mrs. Vasquez, that a check has bounced.

Now, she wasn't a party to this at all. My understanding of this, if any check bounced, it was because Mr. Cotroni never made a deposit -- had sufficient money to back up the check in Montreal.

THE COURT: No, that is Mr. Iannuzzi. She said, "rejected." I do not know what "rejected" means. It may be the instructions of the bank.

"Bounced" means there wasn't sufficient funds.

MR. PUCCIO: There was a check rejected. It was not because of Mr. Catania. It was because the bank in Montreal would not pay the bank in Mexico, which would mean Mr. Cotroni would not have the money to back up

the check.

May I?

MR. IANNUZZI: Surely.

(Document shown to counsel.)

MR. IANNUZZI: May we ask the witness if in fact --

THE COURT: Ask her any questions you want outside the hearing of the jury.

MR. IANNUZZI: Of course.

Q The check that Mr. Catania brought you, -- gave to you -- did you bring it to New York with you?

MR. PUCCIO: I object. There was no check given to her.

THE COURT: I do not care what it is. This is outside the hearing of the jury. I want everything she has in the way of documents to be presented.

MR. IANNUZZI: I understand she has the check in New York. Maybe I am having difficulty talking to her.

THE WITNESS: No, she left the paper -- I left the paper back -- just short papers.

MR. IANNUZZI: In the hotel in New York?

THE WITNESS: No, in Mexico.

THE COURT: Maybe she can come back Thursday with them?

MR. IANNUZZI: Well, maybe somebody could.

MR. PUCCIO: These are all in Spanish.

MR. IANNUZZI: Catania signed them.

MR. PUCCIO: It doesn't make me read Spanish.

THE COURT: We have a translator.

MR. PUCCIO: I haven't had the opportunity to look at them until now.

THE COURT: Could you just read it for us? Let us have it.

Mind you, all this is to establish a possible basis for animus.

MR. IANNUZZI: That is right.

THE COURT: Mr. Iannuzzi, from his questioning, had the textbook "for animus between the witness and the defendant." The dispute arose over the lease and payment of the rent, and nothing has been said about what Catania indicated, and you say it is subject to connection? All this is immaterial unless there is some proof in the record that shows that Catania did or said something to indicate that there was some animus towards Mr. Cotroni, and that colored his testimony.

That's it, right? Not the mere fact that there was a dispute, or somebody paid, or didn't pay, but some conduct on the part of Mr. Catania that indicated

he did not like Mr. Cotroni because of something that occurred here, and he got on this witness stand and accused him of this narcotics Conspiracy because of what happened there.

MR. IANNUZZI: I suggest, if your Honor pleases just as intent can be shown by the actions of persons with reference to the commission of some acts, all acts can be taken into consideration to show motive --

THE COURT: You are just repeating everything that I am saying.

MR. IANNUZZI: He doesn't have to say, "I intend to do this," just like somebody says --

THE COURT: Do not expand on matters we agree upon.

MR. IANNUZZI: I did not know we were agreeing.

THE COURT: All I want to know is what proof you have of Mr. Catania's conduct as a result of this dispute over the rent?

MR. IANNUZZI: I think these are all small pieces of circumstantial evidence --

THE COURT: Give me one small piece in the record.

MR. IANNUZZI: He has testified against Cotroni--

THE COURT: Just the testimony. That wouldn't be enough. I won't allow you to sum up on that.

MR. IANNUZZI: I suggest, if your Honor pleases, that it is up to the jury to determine if these disputes were sufficient.

There are more --

THE COURT: What is in the record to show that there was a dispute?

MR. IANNUZZI: In the record is the fact -- excuse me --

MR. PUCCIO: I might further point out this was alluded to by Mr. Iannuzzi in his statement before the jury. That is the only time it was before the jury.

THE COURT: That's right.

Will you now translate those documents?

MR. PUCCIO: May they be marked?

THE CLERK: Three documents marked Defendant Cotroni's Exhibit N for identification.

THE COURT: Mark each one of them, N, N-1 and N-2.

THE CLERK: So marked.

MR. IANNUZZI: It is my opinion that that check is here. I know two people who have seen it, and she is saying, "No."

THE COURT: What do you want me to do?

MR. IANNUZZI: I am suggesting that I would like to determine whether the darned thing is here. We are not in front of a jury.

THE COURT: I came in for two and a half hours as an accommodation for you.

MR. IANNUZZI: I understand.

THE COURT: If you want to go over until Thursday, it is fine with me.

MR. IANNUZZI: My only difficulty is that the woman is here. I would rather see go home. There's apparently some difficulty, because two, three people have seen the check. This is a surprise to me.

THE COURT: Refresh her recollection. Maybe she will remember where the check is. Ask her any questions you want.

MR. IANNUZZI: May we have the witness come off the stand for a few minutes, and I can confer with her son-in-law with reference to it?

THE COURT: Where is he?

MR. IANNUZZI: In the witness room.

MR. PUCCIO: I thought he was in the courtroom. Is he going to testify?

MR. IANNUZZI: No.

THE COURT: Let us have the documents first.

THE INTERPRETER: Defendant's Exhibit N, on the stationery Le Duc, L. A., Hamburgo 154, Telephone 14-83-57, Mexico 6, D.F., Mexico, D.F., November 8, 1969.

"I received from Mr. Jose Catania the amount of 10,000 pesos, according to the rent for January and February of 1970, for the house located at West 34th Col. Club Residencial Las Anclas, en Acapulco, Guerrero.

"Were the house not delivered on the first of January, 1970, I agree to return the above amount stated in this receipt with a penalty of 10,000.

"If Mr. Catania or the person that he may indicate, were not to take possession of the said house during the first day of January of 1970, they will lose the amount above-mentioned. Upon taking possession of the said house, I will receive the pending balance equivalent to 40,000 pesos."

In pen, it says, "Did not pay, sincerely," an illegible signature, "Mr. J. Jesus Vasquez."

There is a piece of paper attached to Exhibit N which says, "Four towels, one window pane in the dining room, 400 pesos. Four sets of flatware are missing."

MR. PUCCIO: This has to do with 1970?

MR. IANNUZZI: It says '69.

THE COURT: Go ahead, next.

THE INTERPRETER: Defendant's Exhibit N-1. The heading, "Jose Catania, Hamburgo No. 154, telephone 14-83-57, Mexico, D.F.

"Mexico, D.F., October 21, 1969.

"Mrs. Herminia H. de Vasquez."

"Dear Lady: I am hereby confirming my wish to lease the house you own located on West 34, Club Residencial, Las Anclas, in Acapulco, Guerrero, as of the first day of January until the 28th day of February in 1970 at the rate of 25,000 pesos per month, to make a total of two months at 50,000 pesos, an amount that I will pay in the following manner: 10,000 pesos immediately through Check No. F-2-004617, on Banco Azteca, S.A., which I will lose if I do not fulfill my agreement, and 40,000 pesos prior to my taking possession of the house.

"I am also responsible for any loss or breakage that may be sustained by the furnishing of the house, or any damage within the property during my stay in it, which I will inhabit with fourteen people, among adults and small children, and if for any circumstances this number were exceeded, I would of course immediately cover the amount of 50 pesos a day per person. Sin-

cerely, Jose Catania," an illegible signature.

"Note: It is absolutely necessary to present a copy of this lease to take possession of the house."

Defendant's Exhibit N-2. The heading, "Jose Catania, Hamburgo No. 154, telephone 514-83-57-562-70-36, Mexico, D. F.

"Mexico, D. F., December 23, 1970.

"Mrs. Herminia H. de Vasquez.

"My dear Lady:

"I am hereby confirming my wish to lease the house you own located at West 34, Club Residencial, Las Anclas, in Acapulco, Guerrero, as of the 5th day of January to the 10th day of April of 1971, leaving on the 11th. For this stay, I will pay the amount of 68,750 pesos, an amount --"Strike that --"I have given in advance 11,000 pesos to guarantee that this contract will be kept. I undertake the responsibility of paying the remaining 57,750 pesos in cash, ten days before taking possession of the house, and were I not to do so, I would lose the advance payment for lack of fulfillment of the contract.

"I also agree to leave the house on Monday --" There is a correction -- It said Sunday, and it now says Monday. It used to say the 11th of April, it now

says the 12th of April of 1971, "at 3:00 o'clock in the afternoon, otherwise I would -- I agree to pay 1,600 pesos for the additional day that I would be spending in the property. I also will be responsible for any breakage that may be suffered by the furnishings of the house or any damage to the property during my stay in it, which I will be using with twelve people maximum, and if for any reason this amount were exceeded, I would pay you 100 pesos for any additional person per day, Sincerely, Jose Catania," an illegible signature.

MP fls

(continued on next page.)

THE COURT: Mrs. Vasquez, when you went to see the tenant, Mr. Cotroni, that day, did you receive money, pesos?

A My husband, yes.

THE COURT: Were you present when your husband received the money? Did you see the money?

A Yes.

THE COURT: Was it counted in front of you?

A Yes.

THE COURT: How many pesos were received that day?

A Well, I don't know. It was my husband who received the amount of the rent.

THE COURT: How much?

A Four, I think.

THE COURT: Four what?

A 4,000.

THE COURT: Pesos?

A Dollars.

THE COURT: How many pesos is $4,000?

A It is about fifty, isn't it?

MR. PUCCIO: This witness didn't see anything.

MR. IANNUZZI: She saw him pay.

THE COURT: Did you see Mr. Cotroni deliver the

dollars to your husband?

A Yes.

THE COURT: How many bills were there?

A No, I didn't see that.

THE COURT: What were the denominations?

A I don't remember.

MR. IANNUZZI: Did she get the entire amount of rent for the whole house?

THE COURT: I won't allow that. The entire amount. It's important to know if this was a balance due.

MR. IANNUZZI: Let's ask.

THE COURT: What does the entire amount mean?

MR. IANNUZZI: The entire amount of the lease.

THE COURT: How much?

MR. IANNUZZI: 68,750. All the money for the lease.

THE COURT: Did your husband receive at that time 68, --

MR. IANNUZZI: All the money of the lease.

THE COURT: 68,700 pesos

MR. IANNUZZI: They didn't receive any pesos, Judge.

THE COURT: I know.

A No, only four.

MR. IANNUZZI: That is thousand dollars. Now, we have a difficulty.

MR. PUCCIO: I don't know who is testifying, Mr. Iannuzzi, or the witness.

MR. IANNUZZI: She doesn't understand me.

THE COURT: Did you receive all the --

MR. PUCCIO: I respectfully submit this witness cannot establish what she is being called to establish.

THE COURT: It's not clear that she knows the amouut of money that was paid there. If there is proof, I wouldn't care, her husband doesn't have to be here to confirm it --

MR. PUCCIO: But if the husband told her, it is hearsay.

THE COURT: That's right. What I can't understand is whether she knows how much money, or whether her husband told her.

MR. PUCCIO: She retracted the part of the money being paid in her presence.

THE COURT: Wasn't the money paid while you were there?

A Yes.

THE COURT: Did you go into the house with your

husband?

A Yes.

THE COURT: Did Mr. Cotroni count the money out?

A If he counted, I don't know.

THE COURT: How do you know how much money was there?

A My husband -- Because my husband told me he had already paid in full.

THE COURT: Is that the only way you know how much money was paid at that time?

A Yes.

MR. PUCCIO: Can I ask a question, your Honor?

THE COURT: Sure.

MR. PUCCIO: Mrs. Vasquez, did you see Mr. Cotroni give your husband money, or did your husband tell you that Mr. Cotroni gave him money?

A No, I saw it.

THE COURT: Did he give it to your husband in one bundle of money, or did he count it out separately, each bill?

A Counted.

THE COURT: Did you see him count?

A Yes. But I wasn't paying attention.

THE COURT: What do you want to do, Mr. Iannuzzi?

MR. IANNUZZI: I want to find out about the check. May I have ten minutes, your Honor?

THE COURT: Yes.

MR. PUCCIO: Can I ask the Court to make copies for the defense?

THE COURT: Yes. Will you please make three or four copies of the document.

Ten minute recess. I am going to suspend about 11:45. I must make that meeting.

MR. IANNUZZI: Perfectly satisfactory. I said so yesterday.

(A recess taken at this time.)

THE COURT: Are you ready to proceed?

MR. IANNUZZI: Yes.

THE COURT: You understand my rulings, Mr. Iannuzzi?

MR. IANNUZZI: In reference to conversations with her husband? In other words, hearsay?

THE COURT: That's right.

MR. IANNUZZI: Just as to what the woman saw and observed?

THE COURT: That's right.

MR. IANNUZZI: All right.

(The jury is in the jury box.)

DIRECT EXAMINATION

BY MR. IANNUZZI: (continuing)

Q Now, Mrs. Vasquez, when you went to your house in Acapulco, did you go into the house with your husband?

A Yes.

Q Did you see Mr. Cotroni there?

A Yes.

Q At that time, did your husband and yourself and Mr. Cotroni have a conversation concerning the rent?

A Yes.

Q At that time, did Mr. Cotroni pay some money to your husband?

MR. PUCCIO: I object, your Honor.

THE COURT: Sustained as to form.

Q Did you see Mr. Cotroni pay money to your husband?

MR. PUCCIO: I object as leading.

THE COURT: I will allow it.

A Yes.

Q Did you see Mr. Cotroni count the money to your husband?

A Yes.

Q Do you know the amount of money that Mr. Cotroni paid to your husband?

A It was the amount for the rent.

Q When Mr. Cotroni counted the money, do you know how much it was?

A My husband was satisfied with the rent.

MR. PUCCIO: I object.

THE COURT: Strike that out.

Q Do you know how much it was?

MR. PUCCIO: I object to that.

THE COURT: We don't want to know what your husband told you, but if you know how much it was from what you saw, if you heard Mr. Cotroni count it out, or you saw the bills, then you may testify.

A Well, I don't remember well, but my husband was satisfied with the amount paid for the rent.

MR. PUCCIO: I object.

THE COURT: Strike it out.

Q Do you know if the amount of money that was said was the full amount of the lease?

MR. PUCCIO: Same objection.

THE COURT: Objection sustained. Don't answer it.

MR. IANNUZZI: Very well.

Q Did you offer a commission to Mr. Catania?

A No, I don't know. I never talked to him.

Q To Catania.

A No, I have never spoken to him.

Q When you looked at this man (Indicating), this is not the man who paid the money, or this is the man who paid the money?

A I saw him in a bathing suit, but he was very hairy.

Q Are you saying this is not the man --

A That is the way I saw him.

THE COURT: The only question is whether you recognize him in a business suit.

A Not in a suit, no.

Q Whether he was in a suit or a bathing suit, is this the man that you saw?

A Yes. Now I am beginning to remember.

Q Is this the man that you saw in the bathing suit?

A It's been four years already, and he changed some.

Q Whether he changed, and whether you saw him in a bathing suit --

THE COURT: Objection sustained.

MR. IANNUZZI: All right.

Q Do you have a copy of the lease with you?

A It is these papers here (Indicating).

Q I show you Defendant's Exhibit N-2 and ask you

if you recognize what that is?

A Yes.

Q Is that the lease for the 1970-'71 year?

A Yes.

Q I show you Exhibit N-1, and ask you if you recognize what that is?

A Yes, except for this stamp on it (Indicating).

Q The Court stamp?

A Yes. It didn't have that before.

Q Is that the lease for the year 1969-'70?

A Yes.

Q I ask you to look at --

A '69-'70, no. It was done towards the end of this year, so that the man would take a house over in January and February.

Q Of 1970?

A Yes.

Q I ask you to look at this document, which is Defendant's Exhibit N, and ask you if you recognize what that is?

A Yes, it is the same, right? Except for this thing (Indicating).

Q And is that a receipt by your husband of some money in 1970?

A Well, it's only a lease.

Q And the document N-1 and N-2, these two documents, who made those up?

MR. PUCCIO: I object, your Honor.

THE COURT: If you know. If you've seen it.

A No. Well, it is my husband who makes them.

Q And --

THE COURT: When did you see these documents for the first time?

A I don't remember.

Q Are those signed by your husband or Mr. Catania, if you know?

A By Mr. Catania.

Q The second time, 1971 pay, if you know, any money on the lease?

MR. PUCCIO: I object.

THE COURT: Objection sustained.

You say you never saw Mr. Catania?

A No.

MR. IANNUZZI: Very well, I have no further questions of this witness. Although I offer the documents into evidence.

MR. PUCCIO: Could I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. PUCCIO:

Q Mrs. Vasquez, let me direct your attention to Defendant's Exhibit N, specifically the handwriting or the words incorporated in ink: "No pago?"

A What do you want me to tell you?

Q Is that your handwriting?

A My husband's.

Q Did you see your husband write the words "no pago" on that document?

A Yes, because he is the only one that has these papers.

Q And you've referred to this as the lease for the 1969 --

THE COURT: Excuse me a minute. Do you know when your husband wrote that, "no pago"?

A Well, when he did not receive the money.

Q Did --

A But from Mr. Catania.

Q Did you see your husband write those words on that document? Defendant's Exhibit N?

A Well, I tell you that he is the only one that had these papers.

Q Well, before you came up here, did you have to

see your husband about obtaining these papers?

A No. He's not in Mexico. I took them up.

Q When you took them up, were the words "no pago" on that document, Defendant's Exhibit N?

A Yes. Exactly as they were, I brought them up.

(continued on next page.)

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CROSS-EXAMINATION

BY MR. PUCCIO: (Cont'd.)

Q Now, Mrs. Vasquez, do you know what those words mean, no pago?

A Yes, it means that he didn't pay a single cent.

Q That would be for the 1969, 1970 lease for the house?

A Yes.

Q Who didn't pay a single cent?

A The man who -- Mr. Catania.

Q How did you know that?

A Because my husband told me so.

MR. PUCCIO: May I look at the other documents, your Honor. They are right here.

(Pause)

Q So far as you know, no money was paid for the rental of your house during 1969 and 1970, is that right?

A Not from Mr. Catania, no.

Q Do you know who paid the rental of the house in 1969 and 1970?

A Mr. Cotroni.

Q Were you present when he paid the money?

A I already told you I was.

Q So in 1969 -- withdrawn. For the 1969, 1970 season Mr. Catania paid no money for the rental of the house but Mr. Cotroni did in your presence?

A Yes.

Q The house was rented again in 1970 and 1971 or for the 1970, 1971 season, is that correct?

A No, the contract is drawn at the end of December in order to take possession of the house on January 1st through February of 1970.

Q Yes, that was for 1970?

A '70.

Q And that's the years you say Mr. Cotroni paid the rent in your presence?

A Yes.

Q How about the next season, was the house rented again?

A No, it was the last year that he rented it.

Q Are you saying that -- withdrawn. The lease was signed in 1969 for the rental of the house -- for the first two months of 1970 and that the last time --

THE COURT: Objection sustained. You are saying the last time that Mr. Cotroni took occupancy of that house was January and February of 1971, isn't that true?

THE WITNESS: '70.

THE COURT: 1971?

THE WITNESS: No, the date is here -- this is the date.

MR. PUCCIO: Your Honor, could we have some of the testimony read back, because I -- maybe I'm --

THE COURT: The jury may be excused.

(Jury leaves courtroom)

MR. IANNUZZI: May I object to the procedure?

THE COURT: You want it reread in front of the jury?

MR. IANNUZZI: Not the testimony, I am talking about the cross-examination of the witness.

THE COURT: What's wrong with it?

MR. IANNUZZI: Outside of the presence of the jury.

MR. PUCCIO: I am not going to ask her a question.

THE COURT: He wants to recall what was said.

MR. PUCCIO: I think your Honor had one idea what was said and I had another.

(Testimony read)

THE COURT: She's obviously confused.

(Jury present)

A 2523

4 Vasquez-cross

MR. PUCCIO: May I continue, your Honor.

THE COURT: Surely.

BY MR. PUCCIO:

Q Mrs. Vasquez, to your knowledge, did Mr. Cotroni rent or occupy your house for two successive years?

A Yes, I believe so.

Q Would you be able to remember which two years they were and if you need these document papers you could look at them and the will help you refresh your recollection.

(Documents handed to witness)

A Well, I think I must have another contract that came afterwards or is prior to this, I don't remember.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. PUCCIO: (Cont.)

THE COURT: Does that refresh your recollection, do you now recall the years that Mr. Cotroni occupied the premises?

Don't tell us when the contract was signed. What years did he occupy the premises?

THE WITNESS: It would be '70 to '71 and this one, would be for '70 but I don't remember exactly.

THE COURT: Wasn't it in the months of January and February in the years 1970 and 1971?

THE WITNESS: Yes, it was.

THE COURT: All right, go ahead.

MR. PUCCIO: Thank you, your Honor.

BY MR. PUCCIO:

Q You indicated that in -- withdrawn.

You indicated that the first time Mr. Cotroni rented the house there was no difficult concerning the rent; is that right?

A No.

Q That would be for the months of January and February during 1970?

A I believe --

Q Let me show you Defense Exhibit N and I ask

you if that refreshes your recollection?

(Document shown to witness.)

A I already told you that it was the last contract that Mr. Catania did not pay.

Q Defendant's Exhibit N -- withdrawn.

A But I don't remember so well.

Q Well, do you remember whether or not Mr. Catania did not pay for January-February 1970 rental, that would be the first rental?

A I don't remember.

Q Well, does Defendant's Exhibit N refresh your recollection?

A Well, it says here he did not pay. It means he did not pay.

Q So that Mr. Catania did not pay for January and February of 1970 rental? Is that correct?

A I don't remember.

Q And the document does not refresh your recollection?

A (Shakes head.) But it says here he did not pay.

THE COURT: That's all you know about it is what you are reading there; is that right?

THE WITNESS: Yes, that he did not pay.

Q Well, do you know if anyone else paid for that

rental, that is the first rental, the January-February 1970 rental?

A It was Mr. Cotroni.

THE COURT: How do you know that?

THE WITNESS: But I don't know what year it may have been, it was the last time.

Q So that the first time the rent was paid, is that your testimony -- the first year?

A I already don't remember anymore.

Q Mrs. Vasquez, when for the first time did anyone speak to you about being a witness in this case?

A How did you say that?

Q I will repeat the question.

Before you came to Court today did someone speak to you or ask you to be a witness in this case?

A Well, yes, but how could I tell you?

Q Who first spoke to you about being a witness in this case?

A Well, I don't know that persons name -- a man, but I don't remember his name.

Q Do you know how long ago this man spoke to you, approximately?

A Must be about 24 hours.

Q About 24 hours ago?

A More or less.

Q Did anyone ask you to come to the United States?

A Yes, the same man.

Q All right, when did he first ask you to come to the United States?

A I think on Friday.

Q And did this same man speak to your husband as well?

A No, my husband is not in Mexico.

Q Did anyone speak to you or your husband, to your knowledge, prior to last Friday about being a witness in this case?

A No, my husband has been away since January -- since the 30th of December, he's been away from Mexico.

Q Before he went away, did your husband speak to you at all about these documents?

A No.

Q After you were asked to come here to testify, did you telephone your husband and speak to him about these documents?

A No.

Q So you never advised your husband that you would appear here as a witness; is that right?

A No.

THE COURT: is your husband in the United States?

THE WITNESS: No.

Q Mrs. Vasquez, did you pay your own expenses to come up here and testify?

A Well, I don't know -- my daughter --

Q Did your daughter pay, is that what you are saying?

A My daughter is with me but I don't know.

Q Well, you didn't use any of your own money is that what you are saying?

A No, it's my daughter who came with me and she is the one -- well --

(continued next page.)

Q Is she the one who paid for the trip?

A I think so, although I don't know.

Q Mrs. Vasquez, a few additional questions.

Where were these papers -- Withdrawn.

Were these papers kept in your home prior to your bringing them to court today?

A Yes.

Q Where were they kept?

A Well, in the safe box. In my husband's safe box, where he keeps his valuable possessions or important things.

Q Does he have a key to that box?

A No, it's a safe box with a combination.

Q And you have the combination, is that correct?

A Yes.

Q You opened up the box and took out these documents?

A Yes.

MR. PUCCIO: No objection.

THE COURT: Let them be marked.

THE CLERK: Defendant Cotroni's Exhibits N, N-1 and N-2, previously marked for identification, now marked in evidence.

THE COURT: Anything further?

MR. IANNUZZI: Yes, may I just have one or two

questions before Mr. Puccio cross-examines?

MR. PUCCIO: I am finished.

THE COURT: You asked for a voir dire.

MR. PUCCIO: Yes.

THE COURT: Mr. Klar has not questioned yet. I assume this is still direct examination.

MR. IANNUZZI: Yes.

DIRECT EXAMINATION

BY MR. IANNUZZI: (continuing)

Q Where is your husband, Mrs. Vasquez?

A He is in a tour with Mrs. Echeverria, the wife of the President. A group of people.

Q The wife of the President of what?

A Mexico.

Q Your husband is with the wife of the President of Mexico?

MR. PUCCIO: I object.

THE COURT: She said that, we heard it.

Q Is the President of Mexico there, too?

THE COURT: Objection sustained, it is quite immaterial.

Don't answer it.

We've gone into enough collateral matters.

MR. IANNUZZI: I would have no further questions

at this time.

THE COURT: Any cross-examination?

MR.KLAR: No.

THE COURT: Mr. Puccio?

MR. PUCCIO: For now, no, your Honor.

THE COURT: You may step down.

THE WITNESS: (Through Interpreter) Can I take my papers back?

THE COURT: We will keep them here, and they will be in Mr. Iannuzzi's custody. They will be returned to you.

Your next witness, Mr. Iannuzzi.

MR. IANNUZZI: Do you want to start another witness now?

THE COURT: I am suspending at 11:45.

MR. IANNUZZI: I assume we won't be able to finish.

THE COURT: We will suspend at this time for the day. I ask the jury to return tomorrow at 9:30. I hope we can start promptly at 9:30 and make up some of the lost time.

Again, don't discuss the case with anyone, and when you reassemble tomorrow, don't discuss the case amongst yourselves.

The jury is excused.

(The jury left the courtroom.)

MR. PUCCIO: I have an application to make with respect to these. Your Honor, I have an application. I ask that I be permitted to have custody of these for the next twenty-four hours, at least Defnndant's Exhibit N, I would like to subject it to some analysis.

THE COURT: If you want to, I would have anyone you think might have written on it, other than the husband, give an exemplar.

There are other questions I didn't want to ask, but I might suggest she said these are valuable papers. An expired so-called lease, one paragraph of '69-'70. You didn't ask whether she kept any other subsequent leases, and who those people are. At least for '71, '72, '73, '74.

MR. PUCCIO: I indicated I have no more questions for now. I would like the woman held here for possible recall. It seems to me -- Maybe I shouldn't put my speculation on the record -- This "no pago" on the 1969 lease is interesting. I would like to analyze it to see when it was written.

THE COURT: It doesn't seem to be inconsistent with any of the testimony.

MR. PUCCIO: No. It's the defense contention the

money was paid for 1969-'70 season. If someone wrote "no pago" on the '69 document, probably suspecting it was the '70-'71 document --

THE COURT: I think it's something you can explore.

MR. IANNUZZI: The document will be in my custody.

THE COURT: I've changed my mind.

MR. IANNUZZI: I have no objection to being present, but I think it should be kept in my custody. If there is a scientific analysis, I have no objection.

THE COURT: They are in the custody of the United States Attorney for any analysis it feels appropriate.

MR. IANNUZZI: May we be present at such time?

THE COURT: At the analysis?

MR. IANNUZZI: Certainly.

THE COURT: If the Government finds there is something wrong, you will be given a report before they can use theirs.

MR. IANNUZZI: I would suggest, if your Honor pleases, that the United States Government make a representation as to its thrust now. Do you have information this is not the writing of the husband or the wife? This speculation and taking of documents is right off the top of Mr. Puccio's head.

THE COURT: Exactly.

MR. IANNUZZI: I don't know if there is any kind of foul play --

THE COURT: There is no proof of foul play. There is no proof these documents were fabricated. This is what makes it highly suspicious. I know that people keep a half of a scissor and a lock of a child's hair, and there may be businessmen that keep documents like and expired lease four years old, where all the conditions have been met. There is no apparent reason to keep it, but it is all possible. But they are highly suspicious when on a representation of the defendant in the presentation of its defense says in effect: We are not complaining about the 1970, January-February occupancy, obviously if there was a lot of problems, they may not have rented in '71. But in '71 there was a big row between Mr. Catania and the landlord and Mr. Cotroni, and this motivated Mr. Catania to testify against Mr. Cotroni.

MR. IANNUZZI: Perhaps.

THE COURT: Of course perhaps. That's what you'll argue to the jury. You won't say perhaps, you'll say it did.

Now, the instrument says, "no pago," as if the dispute really arose over the 1970 occupancy, not the

1971. So the suspicion is somebody in a hurry, not realizing the consequence, wrote "no pago." It so happens that Mr. Vasquez is touring with Mrs. Echeverria -- That is very impressive -- Therefore he isn't here. I don't know when the cruize started.

MR. IANNUZZI: She indicated it was January 3rd. That is what Mrs. Vasquez testified to.

THE COURT: If they are going to hit all the Caribbean Islands -- Maybe the Government ought to call and find out if Mr. Vasquez is home and invite him up.

MR. PUCCIO: I will check it.

MR. IANNUZZI: I would appreciate that very much.

THE COURT: We would all appreciate it.

MR. PUCCIO: I will check on that.

THE COURT: Mind you, how collateral this issue is, it isn't yet connected to the basis for motivation.

MR. PUCCIO: I realize that.

THE COURT: We assume before the end of the trial the defense will offer some proof that Mr. Catania said or did something from which he can argue that this was the reason -- mind you, this commercial transaction was the reason for Mr. Catania coloring his testimony.

MR. IANNUZZI: Also it goes to Mr. Catania's credibility.

THE COURT: This loan? The fact he didn't turn

over the money?

MR. IANNUZZI: The fact he didn't pay any money over and other things are quite inconsistent with his testimony in this courtroom, and I suggest it isn't the thrust of the defense only, but rather the testimony of the woman in fact that the difficulty was had in '70-'71. The woman said --

THE COURT: I heard it.

MR. PUCCIO: She wasn't permitted to testify to any difficulty in '70-'71.

THE COURT: The woman said "I know nothing about my husband's business. He handled it, he has the documents, and transacted all the business. I happened to be there one day when some money was turned over by Mr. Cotroni to my husband."

MR. IANNUZZI: In the last lease.

THE COURT: That's right.

MR. IANNUZZI: Concerning the last lease, not the first lease.

THE COURT: That's right.

MR. IANNUZZI: She says the difficulty was at that time, and went to Acapulco concerning it.

THE COURT: The difficulty is something you can argue to the jury.

MR. PUCCIO: I ask that the witness be produced

tomorrow.

THE COURT: How do we hold an alien witness? Do I direct her to appear? Suppose she doesn't appear? Do I direct she post a bond?

MR. PUCCIO: We can serve her with a subpoena.

THE COURT: What happens? Suppose she isn't here? What do I say, the testimony is stricken?

MR. PUCCIO: I am not too sure if that is the remedy.

THE COURT: You had the opportunity to cross-examine, and she disobeyed a Court's subpoena -- Wasn't it Mr. Iannuzzi who wanted me to tell the Government to produce documents? What do I do? Tell Mr. Vasquez's friend, the President of Mexico, to produce Mrs. Vasquez because she disobeyed a subpoena?

MR. PUCCIO: I am asking --

THE COURT: I will tell her to remain here.

MR. PUCCIO: If she doesn't remain, fine. We prefer her to remain, though.

THE COURT: The daughter is here, and the son-in-law is here.

MR. PUCCIO: I have a further application.

THE COURT: I will do it for what good it will do.

MR. PUCCIO: I have a further application. There were certain documents Mr. Iannuzzi indicated to me were

produced by --

THE COURT: It's a quarter of 12:00. Bring the witnesses in, and I will make the direction. You can give me a citation if they don't appear, and maybe an inference can be drawn from their failure to follow the direction of the Court, on the theory it is suppression of evidence.

MR. IANNUZZI: I will get them, your Honor.

THE COURT: Yes. That is the only possibility I can see.of any good coming --

MR. PUCCIO: I think if your Honor asked them to remain, they would remain.

THE COURT: I will do the best I can.

(continued on next page.)

THE COURT: Would you come forward, please?

Would you come forward, too, please?

Do you speak a little English?

MRS. CALLICO: A little.

THE COURT: Would you rather have an interpreter?

MRS. CALLICO: Yes, I prefer it.

THE COURT: Do you speak a little English?

MR. KURI: No, nothing.

THE COURT: You are the daugher of Herminia Hernandez de Vasquez?

MRS. CALLICO: Yes.

THE COURT: May I have your name?

MRS. CALLICO: Giorgma Yolanda V. de Callico.

THE COURT: This is your husband, I assume?

MRS. CALLICO: This is my husband.

THE COURT: May I have your name?

MR. KURI: Salvatore Callico Kurri.

THE COURT: And where do you live?

MRS. CALLICO: Mexico City.

THE COURT: The address -- May I have the address?

MRS. CALLICO: A-r-e-q-u-i-t-a, 706.

THE COURT: When did you come to New York?

MRS. CALLICO: On Friday.

THE COURT: And are you at a hotel?

MRS. CALLICO: Yes.

THE COURT: What is the hotel?

MRS. CALLICO: In the Plaza Hotel.

THE COURT: At 59th Street in New York?

MRS. CALLICO: Yes.

THE COURT: And I hope you have enough money to stay another day?

MRS. CALLICO: We have expense money.

THE COURT: Is it enough to stay until tomorrow?

MRS. CALLICO: Our expenses are paid.

THE COURT: Who paid them?

MRS. CALLICO: A man who spoke to us in Mexico.

THE COURT: If you do not have enough money to stay until tomorrow, I will direct the Government to see to it that the hotel bill is paid for tomorrow.

MR. PUCCIO: Not at the Hotel Plaza.

THE COURT: At the Hotel Plaza. If the defendants can afford it, the Government can afford it.

MR. PUCCIO: That does not always necessarily follow.

MRS. CALLICO: We need to leave urgently. My husband works, and he come with me because I am now married, and my father rents his house, and he is now in Mexico City.

THE COURT: I will see to it that the Government pays you $20, which is a witness fee, for each of you.

MRS. CALLICO: Thank you.

THE COURT: The law says that a witness is entitled to $20 a day for each day they attend court, so since the Government is asking that you stay until tomorrow, I am asking the Government to pay you a witness fee.

MR. PUCCIO: We will pay $36 a person.

THE COURT: How is that?

MR. PUCCIO: We will pay $36 a day for each person that stays, the witness fee, plus the hotel. Some of the rooms at the Plaza are a $100 a night.

THE COURT: How much are you paying for your hotel?

THE WITNESS: I don't know.

THE COURT: Is it two rooms, -- two adjoining rooms? It is not a suite?

MR. PUCCIO: That would be $36 a day total, $20 witness fee, and $16 a day subsistence. $36 for each one, that comes to $108 to stay tomorrow.

THE COURT: Could they get that before they leave for Mexico?

MR. PUCCIO: Absolutely.

THE COURT: You will get that tomorrow.

MR. IANNUZZI: May I address myself to you for a moment? The son-in-law is not going to be a witness, and

he has difficulty with his job.

THE COURT: I do not know whether he is going to be a witness.

MR. IANNUZZI: He is not going to be a witness.

THE COURT: That is what you say. The Government is paying for it, and they may change your mind.

MR. IANNUZZI: May I just suggest --

THE COURT: I do not know.

MR. IANNUZZI: -- the only difficulty is that he has with his job.

THE COURT: I will talk to him about that.

MR. IANNUZZI: Fine.

There is a brother here also.

MR. PUCCIO: We will pick that one up, too.

THE COURT: Where is the brother?

MR IANNUZZI: He is sitting in the courtroom.

THE COURT: Will you come forward, please?

Do you speak English? A little bit.

Do you work?

THE BROTHER: Yes.

THE COURT: The Government is going to pay you $36 for staying until tomorrow. I know there may be some difficulty, and if there is anything that the Government can do to call your employer and explain that the Court asked you to stay, would that help you?

MR. KURI: I think a written letter will be quite enough.

THE COURT: You will have that. So do not worry. I do not know whether you are going to be a witness or not. I do not know whether anybody is going to be a witness. The Government is asking you to stay, and I am directing you to be here tomorrow at 9:30, all right?

Thank you, and enjoy New York.

* * *

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* * *

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
JAN 27 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 73-CR-898

FRANK COTRONI, FRANK DASTI, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

January 16, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

and a jury

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Michael Picozzi
Official Court Reporter
U. S. District Court

105

Appearances:

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Assistant U.S. Attorney

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Attorney for Defendant Cotroni

MICHAEL KLAR, ESQ.
Attorney for Defendant Dasti

THE COURT: Bring in the jury, please.

(The jury entered the jury box.)

THE COURT: Good morning, ladies and gentlemen. I am sorry for the slight delay.

Mr. Iannuzzi, are you ready to proceed?

MR. IANNUZZI: Yes, sir.

THE COURT: Your next witness, please.

MR. PUCCIO: I would like to look at certain documents and have Mrs. Vasquez back again.

Your Honor, we had Defendant's Exhibits N, N-1 and N-2 translated. Can we mark the translations in Evidence?

THE COURT: Just for Identification?

MR. PUCCIO: I would like to leave the translations.

THE COURT: You can't do that until there is consent. Has the other side seen the translation?

MR. PUCCIO: No.

THE COURT: I think that is important.

MR. PUCCIO: Mrs. Clancy made the translations.

H E R M I N I A V A S Q U E Z , further testified through the Interpreter, Libia Clancy, as follows:

THE COURT: Can you proceed with your examination?

MR. PUCCIO: Yes.

THE COURT: If there is any question about the translation, call my attention to it.

MR. IANNUZZI: Yes, sir.

CROSS-EXAMINATION

BY MR. PUCCIO (Continuing):

Q Mrs. Vasquez, did you bring any other documents with you in addition to the three documents that were marked in evidence yesterday?

A No.

MR. PUCCIO: May I have a minute, your Honor?

THE COURT: Yes.

(Pause.)

MR. PUCCIO: Well, were there certain documents you gave to Mr. Iannuzzi yesterday which he has returned to you?

A Only the check.

Q May I look at that, please?

A Yes.

(Pause.)

MR. PUCCIO: May I have a minute to look at these, your Honor?

THE COURT: Yes.

(Pause.)

MR. PUCCIO: Could I have these marked for

Identification?

THE COURT: Yes.

THE CLERK: Four documents marked Government's Exhibits 51, 52, 53 and 54 for Identification.

(So marked.)

Q Mrs. Vasquez, you indicated yesterday that you saw Mr. Cotroni give your husband a sum of money, is that correct?

A Yes.

Q How much money did -- do you know how much money Mr. Cotroni gave your husband?

A I only saw him turn over the money to him. I didn't count it.

Q Do you know of your own knowledge by your own observation how much money it was?

A I only saw my husband count it and that he was satisfied.

MR. PUCCIO: Your Honor --

THE COURT: Strike out the entire answer as not responsive.

Q Do you know by your own observation how much money it was? That is, aside from what you may know from your husband.

A Could you repeat the question?

Q Do you know by your own observation, by seeing it, how much money it was?

A No.

MR. PUCCIO: Your Honor, may I read the exhibit?

THE COURT: Do you agree that it is accurate?

MR. IANNUZZI: I would only ask, did Mrs. Clancy translate this?

MRS. CLANCY: Yes.

MR. IANNUZZI: I assume those are correct translations.

THE COURT: All right.

MR. PUCCIO: May I, your Honor?

THE COURT: Yes.

MR. PUCCIO: The first one, which is Defendant's Exhibit N, was on the stationery of Le Duc Sa, means a corporation in Mexico. Mexico, November 8, 1969. "Received from Mr. Jose Catania the sum of 10,000 pesos that corresponds to the rent for January and February of 1970 for the house located at West No. 34 Residential Club, Las Anclas, Acapulco, Guerrero. If for any reason whatsoever the house were not turned over on January 1, 1970, I would agree to return the sum mentioned in this receipt with a penalty of $10,000."

Second paragraph: "If Mr. Catania or the person he may designate does not take possession of the said house during the firstday of January 1970 he will forfeit the said sum."

Third paragraph: "Upon taking possession of the said house the pending balance of 40,000 pesos will be paid to me. Sincerely Mr. J. Jesus Vasquez."

MR. IANNUZZI: May I inquire in reference to the forfeiture paragraph, does it say 10,000 pesos or dollars?

THE COURT: Pesos.

MR. IANNUZZI: He said dollars.

THE COURT: Would you read back what he read.

(The following was read by the reporter: "I agree to return the sum mentioned in this receipt with a penalty of $10,000."

THE COURT: That is corrected to say pesos.

MR. PUCCIO: Your Honor, on the receipt it says 10,000.

THE COURT: 10,000? Obviously dollars is wrong because the original paragraph receipted 10,000 pesos.

MR. PUCCIO: I think we can agree to that. In the same paragraph it is spelled out as 10,000 pesos.

Defendant's Exhibit N-1 is dated October 21,

1969. It is a letter to Mrs. Herminia Vasquez and reads as follows: "Dear Madam: I am hereby confirming my desire to lease the house which you own located on West No. 34, Residential Club, Las Anclas, Acapulco, Guerrero, starting on January 1st through February 28, 1970 at the rate of 25,000 pesos for a total of two months at 50,000 pesos, an amount I will pay as follows:"

Next paragraph: "10,000 pesos immediately by check F-2004617, on the Banco Azteca, S.A. which I will forfeit if I fail to keep my agreement and 40,000 pesos prior to taking possession of the house.

"Likewise, I agree I would be responsible for any loss or breakage that the furnishings may sustain or any damage caused to the property during my stay. There will be 14 people staying there. If for any reason whatsoever this number were exceeded I will pay an additional 50 pesos a day per person. Sincerely Jose Catania. Note it is essential a copy of this contract be present in order to take possession of the house."

The last one is Defendant's Exhibit N-2, again a letter Jose Catania, Hamburgo No. 154, telephone 514-8357-562-7036, Mexico, dated December 23, 1970.

Again a letter to Mrs. Herminia DeVasquez.

"Madam: I am confirming my desire to lease the house which you won." Correct that to "own." Located at West 34, Residential Club, Las Anclas, Acapulco Gurrero, starting on January 5 to April 10, 1971, to be vacated on the 12th. I shall pay the sum of 68,750 pesos and guarantee the fulfillment of the contract. I made deposit of 11,000 pesos. I agree to pay the balance of 57,750 pesos in cash ten days prior to taking possessionof the house. If I fail to do so I will forfeit the deposit.

I further agree to vacate the house Monday, April 12, 1971 by 3 p.m. Otherwise I agree to pay an additional 1600 pesos per extra day spent on the said property. Likely I agree I should be responsible for any breakage sustained by the furniture in the house or any damage to the property during my stay in it. There will be 12 people staying there and therefore any reason whatsoever this number is exceeded I shall pay an additional 120 pesos per day per person. Sincerely Jose Catania."

No further questions.

(Continued on next page.)

THE COURT: Mr. Klar, do you have any questions?

MR. KLAR: I have no questions.

THE COURT: Mr. Iannuzzi, redirect.

May the translations be marked in evidence?

MR. PUCCIO: I have no objection.

MR. IANNUZZI: I have no objection.

THE COURT: Make sure the corrections are made. Let the Clerk mark them first.

MR. PUCCIO: There is a copy of the original attached to each translation. Can we mark it that way?

THE COURT: Yes, mark the translation with the letter.

MR. PUCCIO: I am sorry, there is one on Defendant's Exhibit N, there is one thing, there are the words "no pago" written in ink over the receipt. And Mrs. Clancy translated that as "did not pay."

THE CLERK: Defendant's Exhibit N -- translation of Defendant's Exhibit N is marked Defendant's Exhibit NA in evidence.

Translation of Defendant's Exhibit N1 is marked Defendant's Exhibit N1A in evidence.

Translation of Defendant's Exhibit N2 is marked Defendant's Exhibit N2A in evidence.

(So marked in evidence.)

THE COURT: I think it is appropriate at this time for the Court to charge you on the reason that

this evidence is before you and how you should deal with it. The credibility of witnesses is always an issue, obviously, and Mr. Catania's credibility is in issue. That means it is a contested issue before you. His reasons for testifying, his motive for testifying is before you. The defendant advances the claim that some dispute arose over the leasing of the house for the year 1970-71 because Mr. Catania apparently handled some money and made the arrangements for the leasing. And the dispute arose between Mr. Catania and Mr. Cotroni or Mr. Catania and the landlord of the house. And there was certain bitterness that resulted from that. And that somehow colored Mr. Catania's testimony.

I give you that instruction at this point so that you may understand why a commercial transaction is brought into this case.

All right, go ahead.

MR. IANNUZZI: May I request, your Honor --

THE COURT: Go ahead.

MR. IANNUZZI: Not only the motive aspect but also the credibility of Mr. Catania's testimony as to this transaction as he testified before.

THE COURT: You might consider that Mr. Catania said something which is inconsistent with his

his testimony but I will charge you in the main charge the matter of inconsistency is solely for you to determine, whether in fact it was an inconsistency. You determine as to whether it was an inconsistency, and whether it was to a material or immaterial matter, and based on that you will decide whether it affects Mr. Catania's testimony.

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q In reference to the contracts that have been presented in evidence, these contracts are written to you? Is that correct?

A Yes.

Q So that you did have something to do with the renting of the house?

MR. PUCCIO: I object.

THE COURT: Objection sustained.

Q And Mr. Catania wrote these to you?

MR. PUCCIO: I object.

THE COURT: Objection sustained.

Q Did Mr. Catania write these?

MR. PUCCIO: I object.

THE COURT: Objection sustained. This witness has testified clearly that she doesn't know a thing about how this transaction occurred. So when you ask

her conclusory questions the objections will be sustained.

Q When these contracts were written -- withdrawn. Were these contracts sent to you?

MR. PUCCIO: I object.

THE COURT: To you personally.

A Could you repeat the question? What do you want to know?

Q These contracts, instead of to your husband were sent to you --

MR. PUCCIO: I object to the form.

THE COURT: Sustained as to form. If you want the witness to testify as to whether the documents say Herminia Vasquez, objection sustained, the documents are in evidence and they speak for themselves.

Q After these documents were made up, Mrs. Vasquez, did you see them?

A Yes.

Q And when there was a -- was there a check presented with the contract, do you know?

MR. PUCCIO: I object to the form.

THE COURT: I want you to testify only concerning what you did, what you saw, nothing concerning as to what your husband told you about the

transaction.

Do you understand that clearly?

A Yes, of course.

THE COURT: Now, the question then, Mr. Iannuzzi?

MR. IANNUZZI: May I have it repeated?

THE COURT: Give it again, would you please?

Q After -- withdrawn.

Was a check presented to you with the contract from Mr. Catania?

MR. PUCCIO: I object as leading.

THE COURT: I will allow it.

A No.

Q I ask you to look at Government's Exhibit 52 and I ask you if you recognize what that is?

A Yes, it is a check.

Q To whom is that check made out?

MR. PUCCIO: I object, your Honor.

THE COURT: Overruled, I will allow it.

A To me.

Q By whom was it made out?

A Well, it is signed by Mr. Catania, no?

Q Was this check given to you in 1969?

THE COURT: Given to you personally in hand.

A Well, no.

Q Did you see this check and sign it to put it into the bank?

MR. PUCCIO: I object to the form.

THE COURT: Overruled.

A But we have a joint signature, my husband and I.

THE COURT: Did you sign the check on the back?

A Since --

THE COURT: Strike it out as not responsive.

Did you sign the back of the check, you personally?

A No, I'm telling you --

THE COURT: Strike out the rest.

Q Did there come a time that the check was dishonored at the bank, if you know?

MR. PUCCIO: I object.

THE COURT: Overruled. Did you get notice from the bank that the check was dishonored?

A Maybe I should explain.

THE COURT: No. Strike it out, just answer the questions, please.

A It is because I never received it. My husband received everything. He does everything in my name but he is the one who receives everything.

6a MR. PUCCIO: I object.

HS:jm
T2amR

THE COURT: I will allow it to stand.

(Continued next page)

Q Did you receive notice on your bank account that the check was dishonored at the bank?

A Yes.

Q I ask you to look at Government's Exhibit --

THE WITNESS: It is a different way, you know, it is my husband who does everything, though everything is in my name, he is the one that does everything.

THE COURT: Are you saying that you know nothing about this transaction whatsoever?

MR. IANNUZZI: I object to that.

THE COURT: Overruled.

THE WITNESS: Yes, I do know.

THE COURT: You still object to the question, Mr. Iannuzzi?

THE WITNESS: But my husband receives all the checks that are issued to me --

MR. IANNUZZI: Yes.

THE COURT: All right, objection sustained. Strike it out.

BY MR. IANNUZZI:

Q Did you receive notice on your back account that the check was dishonored?

A At my home, yes, I did receive because it

arrives at my house -- the mail comes to my house.

Q I ask you to look at Government's Exhibits 54 and 53 for identification and I ask you if you recognize what those are?

(Documents shown to witness.)

A Yes, they are the ones that I brought here.

Q Did they also arrive at your house?

A Yes, these are the ones that came notifying us.

Q Now, did your bank also notify you that a forty thousand peso check of Mr. Catania was dishonored?

MR. PUCCIO: I object.

THE COURT: The jury may be excused.

(Jury leaves courtroom.)

THE COURT: Mr. Puccio, we are going to spend two or three days just finding out who paid what. This case does not revolve on that at all and you are playing into Mr. Iannuzzi's hands and just wasting my time. What is the difference? Bring Mr. Catania back and let him explain.

MR. PUCCIO: He will be brought back.

My objection is that the witness knows nothing.

THE COURT: But Mr. Iannuzzi is going to make sure that she does, whether she does or does not. The point I am making, what difference does it make? You

are exaggerating the issue in this case for no reason.

MR. IANNUZZI: May I please --

THE COURT: Let me say this:

You do not obey the orders of this Court. You do not abide by my rulings.

MR. IANNUZZI: I do not understand. I am sure your Honor wouldn't permit that.

THE COURT: I am trying not to, but it is a losing battle.

MR. IANNUZZI: I am trying not to disobey.

THE COURT: You are not making an effort at all. You know what you are doing.

MR. IANNUZZI: May I indicate that you have been asking questions of this witness and they seem to be in a very loud voice and perhaps she's very nervous and it may be intimidating.

THE COURT: Don't make that point on the record. I am telling you that I am annoyed at the extended examination of this witness, who has said at least fifty times that she knows nothing about the transaction.

MR. IANNUZZI: Mr. Puccio wanted her back.

THE COURT: That does not excuse your conduct.

MR. IANNUZZI: He marked these documents for

identification.

THE COURT: What does that have to do with your persistent examination in trying to show she knows nothing? She said many times that she knows nothing about it.

MR. IANNUZZI: She apparently knows something, because she said she does.

THE COURT: You finally got her to admit she received something in the mail. That means she knows the deal that Catania had with Cotroni, the deal that Catania had with her husband.

MR. IANNUZZI: All I suggest that she knows what she knows. I am not saying that she knows other things.

THE COURT: No, you are not saying that.

MR. IANNUZZI: I don't remember.

THE COURT: The repeated rulings were, don't ask --

MR. IANNUZZI: About things she doesn't know.

THE COURT: Don't ask her about the transaction with her husband, when she has already repeatedly said she does not know the form:

"Now, isn't this contract in your name --"

MR. IANNUZZI: It is, sir.

THE COURT: That's in the record and I ruled on that.

MR. IANNUZZI: Yes, sir.

THE COURT: It is in evidence.

MR. IANNUZZI: And this is her bank account.

THE COURT: All you need do is read it to the jury.

MR. IANNUZZI: And this is her bank account and she says this was received by her.

THE COURT: And they were received by her.

MR. IANNUZZI: And she saw them.

THE COURT: You can put that in to the record without asking that.

You have been wasting a lot of time trying to prove she knows about the deal with Catania --

MR. IANNUZZI: She knows part of it. I just want her to tell what she knows and I think that is proper. I am not trying to get her to say what she does not know.

THE COURT: Yes, you are trying to put before the jury in the form of the questions and answers that she dealt with Catania and I have been sustaining objections to that and you are wasting a lot of time doing it.

MR. IANNUZZI: May I also suggest that I would respectfully indicate that it is improper to put the jury out of the courtroom and then instruct Mr. Puccio how he should try his case.

THE COURT: When was that? You mean now?

MR. IANNUZZI: Yes.

THE COURT: I am telling Mr. Puccio that I won't stand for any extended examination on documents that are going into evidence. If he wants to prove what the documents mean, do not waste my time by asking this witness who knows nothing, bring Mr. Catania in.

MR. IANNUZZI: Those are not documents that Mr. Catania ever received. Those are the checks in her bank.

THE COURT: Mr. Iannuzzi, I have been in this case long enough and I know the Government's theory and I know their argument. The reason these checks bounced was because Mr. Cotroni didn't put the money into the bank.

MR. IANNUZZI: Mr. Catania's bank?

THE COURT: Isn't that on the record?

MR. PUCCIO: I mentioned something -- apparently, it is somewhat confusing between the two

years.

In any event, our theory --

THE COURT: If that's the explanation, I am saying to Mr. Puccio, "Don't waste my time trying to prove it through this woman who knows nothing. Bring in someone that knows something."

That is not telling him how to try his case, but not to waste my time.

MR. IANNUZZI: I don't remember -- and I may be mistaken -- that Mr. Puccio said that Mr. Cotroni did not put money into Mr. Catania's bank.

THE COURT: I didn't say "Mr. Catania's bank", a bank.

MR. IANNUZZI: These are drawn on Mr. Catania's bank.

THE COURT: Did you say that?

MR. PUCCIO: What I said yesterday was that there was money sent from Canada.

THE COURT: That's right.

MR. PUCCIO: Through the First National City Bank -- to Mexico through the First National City Bank. On checking on it yesterday, I think what happened was that there was a double payment. Mr. Orsini was sending money to Mr. Catania and the

bank paid twice in Mexico and wanted the money back and Mr. Catania indicated that he had received the money in Mexico and that the bank that should be responsible is the bank in Canada.

THE COURT: Didn't you say that was the reason the check bounced?

MR. PUCCIO: I think I misunderstood --

THE COURT: Didn't you say something like that?

MR. PUCCIO: I did.

THE COURT: That is why I said what I said.

MR. IANNUZZI: I would suggest if twice as much money were put into the bank, the check wouldn't have bounced at all, sir.

THE COURT: It is like a dagger at my heart.

THE WITNESS: Your Honor, couldn't I please explain?

THE INTERPRETER: She is desperately trying to explain.

THE COURT: No, the one thing I want this witness to know is that she is to answer the questions asked of her and nothing else.

Now, forty minutes have been wasted so far this morning.

MR. IANNUZZI: I would take exception to the

fact that the witness is trying to give a full and complete answer to the queries and your Honor is not permitting it.

THE COURT: Then ask her what happened.

MR. IANNUZZI: I wouldn't --

THE COURT: Now, I am telling you how to try the case. I say the questions that you put to her are improper.

Seat the jury.

(Jury present.)

REDIRECT EXAMINATION

BY MR. IANNUZZI (continued):

Q Mrs. Vasquez, what happened concerning this transaction in reference to the rental of the house?

A The first time or the second?

Q The first one and then the second one.

THE COURT: Don't tell us what your husband told you. You tell us what happened from what you saw and heard.

A There were small problems the first time.

Q What were the problems, Ma'am?

A About the payment.

Q What about the payment wasn't proper?

A Well, some checks were returned for

insufficient funds.

Q This was the first rental?

A Yes.

Q Was it ultimately -- withdrawn.

And was it ultimately resolved and were you paid finally for the first rental by Mr. Catania?

A Yes.

Q Now, what happened with the second rental, were there also problems?

A More problems.

Q What were the problems and please say what happened?

THE COURT: What you saw, what you heard, not what your husband told you.

A Well, the man didn't pay.

Q Which man?

A The man, Mr. Catania.

Q Then what happened?

A Days went by and we went to Acapulco and Mr. Cotroni paid me.

Q On the document which says "No pago", who wrote that?

A My husband.

Q Did you see him write that?

A Yes, because he was angry.

Q And did Mr. Catania receive a commission from you concerning the rental of these houses?

A Well, yes, but how can I tell you? I have never seen that, but he has received it.

Q He -- he has received the commission?

A Yes.

Q Did he ask you for the commission or did you insist that he take it?

THE COURT: Did you say that you never saw or spoke to Mr. Catania?

THE WITNESS: No, I have never spoken to him, but I know -- I know.

THE COURT: Strike that out, "I know."

Have you ever seen Mr. Catania?

THE WITNESS: No.

THE COURT: That was the kind of question that I referred to when the jury was out. Do we understand each other now?

MR. IANNUZZI: I understand you very well. I am only trying to probe the witness' mind.

THE COURT: Next question, Mr. Iannuzzi.

MR. IANNUZZI: I have nothing further.

THE COURT: Anything further?

MR. PUCCIO: No questions.

THE COURT: Any questions?

The witness may step down.

THE WITNESS: May I take my papers?

MR. PUCCIO: I would offer them.

THE COURT: Let them be marked.

MR. IANNUZZI: Since Mr. Puccio has photocopies, may we return the documents to the lady?

THE COURT: What difference does it make to her? You will see that they are returned to her.

The jury may be excused for a moment.

(Jury leaves courtroom.)

THE COURT: I do not want to be severe with you, Mr. Iannuzzi, but that last question was a direct challenge to the ruling of this Court.

MR. IANNUZZI: Absolutely no, sir.

THE COURT: Don't do it again.

MR. IANNUZZI: May I suggest this:

Your Honor has apparently adopted an attitude towards the defense and defense counsel, namely myself, and I suggest that my intentions are as honorable as Mr. Puccio's and yourself to get at the truth.

THE COURT: You will have to prove that to me.

You haven't yet.

MR. IANNUZZI: I suggest it is not my responsibility to prove my qualifications, but I would suggest that I am asking questions -- asking the woman questions if she knows.

THE COURT: That was in direct disobedience to my ruling and that was soon after I had that talk with you when the jury was out.

MR. IANNUZZI: I most respectfully suggest that it was not intended as such.

THE COURT: The record speaks for itself.

MR. IANNUZZI: It certainly does.

I would suggest that the record does not indicate your Honor's tone with me.

THE COURT: I have been stern and annoyed with you.

MR. IANNUZZI: And you are very loud.

THE COURT: And I am very loud and don't do it again and I am saying that in very stern words.

MR. IANNUZZI: And may I suggest that that's the same tone that you asked questions of the witness.

THE COURT: Yes, I must confess that I was irritated with her, that she disobeyed some orders of the Court when I asked her to say only what she knew and saw and not what was told to her by her husband.

MR. PUCCIO: There is one document that we cannot find.

Are you offering all of them?

MR. IANNUZZI: We can offer it if you want.

MR. PUCCIO: You offer all of them?

MR. IANNUZZI: I never offered this, because it was not shown to the witness.

MR. PUCCIO: Fine, I would like to hold on to it.

THE COURT: Seat the jury.

Are you going to ask any of these Mexican citizens, the Vasquez family, to stay?

MR. PUCCIO: No, they can all leave at this point.

THE COURT: Miss Clancy --

THE INTERPRETER: Yes, sir?

THE COURT: Would you tell Mrs. Vasquez and her --

MR. IANNUZZI: We have one Vasquez witness.

THE COURT: You want him --

MR. IANNUZZI: Just the daughter.

THE COURT: Seat the jury. Is she the next witness?

MR. IANNUZZI: Yes.

(continued on next page)

THE CLERK: Government's Exhibits 52, previously marked for identification, now marked Defendant Cotroni's Exhibit O in evidence.

Government's Exhibit 53, previously marked for identification, now marked in evidence as Defendant Cotroni's Exhibit P in evidence.

Government's Exhibit 54, previously marked for identification, is now marked in evidence as Defendant Cotroni's Exhibit Q in evidence.

(So marked.)

(Jury present.)

G E O R G I N A Y O L A N D A V A S Q U E Z d e C A L L I C O , called as a witness, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: State your full name and spell it, please.

THE WITNESS: Georgina Yolanda Vasquez de Callico, G-e-o-r-g-i-n-a, Y-o-l-a-n-d-a, V-a-s-q-u-e-z d-e C-a-l-l-i-c-o.

MR. IANNUZZI: May I proceed?

THE COURT: Surely.

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mrs. Callico, are you the daughter of

Mrs. Vasquez?

A Yes.

Q Your married name is Callico?

A Yes.

Q Does your family own a home in Acapulco,Mexico?

A Yes.

Q And do you speak some english?

A Very little.

Q Do you understand some of the questions that I ask you in english?

A Yes.

Q And do you recall that your family rented this house in Acapulco in 1970 and 1971?

A Yes.

Q And do you know a person by the name of Catania?

A Yes.

Q And do you know a person by the name of Cotroni?

A Yes.

Q Do you see Mr. Catania or Mr. Cotroni in this courtroom?

A Mr. Cotroni.

Q Would you indicate where he is, please?

A It is the man who stood up.

THE COURT: Let the record show that the

witness pointed out the defendant Frank Cotroni.

MR. IANNUZZI: If your Honor pleases, the witness didn't understand your instructions. She seemed to be confused when you made an indication for the record.

THE COURT: I just wanted the record to show when you pointed the man out, that you pointed out Mr. Cotroni.

BY MR. IANNUZZI:

Q And did there come a time in 1971 when you spoke with Mr. Catania?

A Yes.

Q Where was that?

A At Mr. Catania's place of business.

Q When you went there, did you speak with him?

A Yes.

Q What did you say to him and what did he say to you?

A I went to collect some money and the man didn't pay.

Q What exactly did you say to him and what did he say to you?

A My father had sent me to collect the rent for the house in Acapulco and Mr. Catania treated me very --

THE COURT: Strike it out.

What did you say to him and what did he say to you?

THE WITNESS: He did not pay me.

(continued on next page)

DIRECT EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

THE COURT: Did he say anything? Did you say anything?

THE WITNESS: Yes, I had gone to collect the money from him.

THE COURT: Did you say anything, did you say, "Mr. Catania, you owe me money. You owe my father money"?

THE WITNESS: Yes, I went to tell him that my father had sent me to get money for the house.

THE COURT: What did he tell you? Give us the exact words. If you don't remember the exact words, tell us substantially what he said.

THE WITNESS: The exact words, I don't remember.

THE COURT: Substantially --

THE WITNESS: He told me that at that moment he would not have the money.

BY MR. IANNUZZI:

Q And do you know whether or not this money that you were to collect was a deposit or full rent, or just what it was?

A I don't know what it was, the deposit or the full rent. I only went to collect money.

Q And thereafter, did you go anywhere with your family?

A I went to my parent's house.

Q Which house, in Acapulco or in Mexico City?

A In Mexico City.

Q And did you have a conversation with your father?

A Yes.

Q And thereafter did you go with your family anyplace else?

A Yes, we went to Acapulco.

Q What occurred in Acapulco?

A We went to my parent's house and we saw Mr. Cotroni.

Q How was he dressed at the time? Do you remember?

A Yes. He has shorts on, very short trousers and I remember he was sunburned. He had a diamond ring, a small diamond ring, and I remember he was wearing something hanging around here.

Q And what happened at that time, if you can remember?

A Yes. The man was surprised.

Q Go ahead.

A And I told him my father was coming for the money for the house. So then he spoke --

MR. PUCCIO: I object, your Honor.

THE COURT: Go ahead.

Q Go ahead.

A And then he got up and after a few minutes he came back and he brought the money.

Q And did he give your father money?

A Yes.

Q And do you know how much money he gave him?

A No.

Q After that, what happened?

A After that, we said goodbye and we went to Mexico City.

MR. IANNUZZI: I have no further questions.

THE COURT: Mr. Puccio?

MR. PUCCIO: No questions, your Honor.

THE COURT: Any questions, Mr. Klar?

MR. KLAR: No, your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Is there any reason now to keep any of these visitors from Mexico? May they return now?

MR. IANNUZZI: As far as I am concerned they may, sir.

THE COURT: Mr. Klar?

MR. KLAR: I have no objection.

THE COURT: Will you tell them that they are free to remain in the courtroom as long as they want to but they are also free to return and may do as they wish.

Next witness, Mr. Iannuzzi.

MR. IANNUZZI: May I go out and get her, your Honor?

THE COURT: All right.

THE INTERPRETER: Your Honor, the husband said that the only thing he now needs is the letter.

THE COURT: Yes. From me or the United States Attorney?

THE INTERPRETER: From your Honor.

THE COURT: Well, all right, he will have to wait until I get a break. What we are talking about is that the husband of the witness who just testified, was concerned about his job, he had to get back to Mexico and I promised him a letter and he said that would be satisfactory, That's all it is. It had nothing to do with the case.

MR. IANNUZZI: Your Honor, yesterday we spoke

about some letters that we would write for this man's employer, one of the Vasquez', could we have something done on that?

THE COURT: I am doing that right now. I don't waste a minute.

THE INTERPRETER: Your Honor, he speaks Italian or Spanish. I don't speak Italian.

THE COURT: Which do you speak more fluently?

THE WITNESS: Both of them.

THE COURT: Then Mrs. Clancy will make the choice. She only speaks Spanish. She doesn't speak Italian.

F R A N C O G A L L I N A , called as a witness, having been first duly sworn by the Clerk of the Court, through the Spanish Interpreter, testified as follows:

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Gallina, what is your occupation, sir?

A I am a professional soccer player.

Q And do you play for a team?

A Yes, the Atlanta.

Q And of what country are you a citizen?

A Italy.

Q And in connection -- withdrawn. Where is this team Atlanta?

A In Mexico City.

Q And where do you reside? Where is your home?

A In Mexico, Mexico City.

Q Are you married, sir?

A Yes.

Q Do you have a family?

A A little girl.

Q And do you know a person by the name of Catania?

A Yes. He's my friend.

Q And by the way, do you know a person by the name of Cotroni?

A Yes.

Q When is it that -- withdrawn. Do you see either Mr. Catania or Mr. Cotroni in this courtroom, sir?

A Yes, Mr. Cotroni.

Q Would you indicate for the Court who you say Mr. Cotroni is?

A Yes, that is he.

MR. IANNUZZI: May the record show that Mr. Gallina identified Mr. Cotroni.

THE COURT: It may so indicate.

Q And sir, when is it that you first came to know Mr. Cotroni?

A It was in '71.

Q Do you know what month it was?

A Between April and August.

Q And where is it, sir, that you became familiar with or got to know Mr. Cotroni?

A It was because of soccer, because a friend of his used to play with me.

Q When you say a friend of his, a friend of whom?

A Mr. Cotroni's friend in Montreal.

Q Played on the same soccer team with you?

A Yes.

Q And under what circumstances is it that you became friendly with Mr. Cotroni?

A We used to see each other. It's not friendship. I knew him.

Q And when is it, sir, that you became familiar with or got to know Mr. Catania?

A When I finished playing in Montreal and I was hired for a team in Mexico.

Q And is it that you met Mr. Catania in Mexico

for the first time?

A Yes.

Q And do you know when that was?

A When I met Mr. Catania, you mean?

Q Yes.

A In October. In the middle of '71?

Q And how is it that you claim to know Mr. Catania?

A Some friends of mine in Montreal told me that there was an Italian and that since I am an Italian that we could get to know each other.

Q And is that how you came to know Mr. Catania?

A Yes, in this way.

Q Now, did there come a time after you knew Mr. Catania that Mr. Catania asked you to do something for him in connection with Mr. Cotroni?

A He asked me for a favor.

Q And will you please explain to the Court and jury what is is that Catania said to you and what it is that you said to him?

A I had planned to go to Italy via Madrid and Mr. Catania asked me whether I could go through Montreal and whether I would be able to speak to Mr. Cotroni and whether I could give him a little money that he needed --

any amount, he said,"because I need it."

Q Now, Mr. Catania wanted you to give him money?

A I don't understand.

Q Did you say that Mr. Catania asked you to give him money?

THE COURT: You to give Catania money?

MR. IANNUZZI: Yes, yes.

THE WITNESS: No, no, the other way around, that I should ask Mr. Cotroni to send him, to give him money.

Q Did he indicate to you, did Mr. Catania indicate to you what the money was for?

A No, I didn't ask him because it wasn't any of my business.

Q What exactly did he say to you and what exactly what did you say to him?

A What Catania told me?

Q And what you told him, yes.

A I went to Montreal and I saw a friend of Mr. Cotroni --

MR. IANNUZZI: I don't think that is responsive to the question. May I ask that be stricken?

THE COURT: Strike it out.

A Then I didn't understand . Why don't you repeat it?

Q When Mr. Catania spoke to you in Mexico City before you were on your way to Madrid, what exactly did he say to you and what exactly did you say to him in the entire conversation?

A He asked me whether I could make my trip to Italy through Montreal, whether I could stop in Montreal in order to talk to Mr. Cotroni.

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(Continued on next page.)

Q Did he say to you at that time anything concerning the money, what it was for, whether it was money owed to him, or borrowed?

A He did not discuss it. He just asked me to tell him that.

Q Did you go to Montreal?

A Yes, I went to Montreal?

Q Did you speak to Mr. Cotroni?

A Yes.

Q Did you tell Mr. Cotroni -- Did you have a conversation with Mr. Cotroni?

A Yes.

Q What occurred then?

A I told Mr. Cotroni that Mr. Peno, Mr. Catania, was asking him for money, that he needed money.

Q You indicated that you told Mr. Cotroni that Catania needed money, did Catania tell you that he needed money?

A Yes.

Q When you told this to Mr. Cotroni, what occurred, if anything?

THE COURT: Don't give us conversation, just tell us what happened.

A He got angry.

THE COURT: Strike it out.

Q What happened after that? Did anything happen, without telling us the conversation?

A I went to Italy. Went back to Mexico. And I asked Mr. Catania if Mr. Cotroni had spoken to him.

Q When was this that you spoke with Mr. Cotroni, if you know?

A I went to Italy in July of '72.

Q Is there some way that you recall all of these dates?

A Yes, because I injured my ankle and I have a cast on my ankle.

Q Is there any way that you have refreshed your recollection as to these dates?

A I have the passport to remember.

Q Are all the dates stamped in your passport?

A I believe so, because of the stamps.

Q When you returned to Mexico City, you say you spoke with Mr. Catania again, is that correct?

A Yes.

Q When did you say to him at that time, and what did he say to you?

A I asked him -- I told him that I had done as he had asked, and asked him whether Mr. Cotroni had talked to him.

Q Anything else?

A And he was very annoyed. And he said bad words, and he was very upset.

Q May we know exactly what he said to you, as well as you remember?

A Well, I remeber the first word, but I don't know whether I can say it.

THE COURT: You can say anything he said. If that is what the question calls for, don't be ashamed.

A The first thing he said was, "Son of a whore," and many other things.

MR. IANNUZZI: Judge, I don't know whether it is necessary to have a repetition of all of the words.

THE COURT: It's up to you. If you want them, I will direct the witness to answer.

Q What else did he say, please?

A That he was a bad type of person, he behaved badly. Many things.

Q Did you ever speak to Mr. Catania again about this matter?

A When he was in jail in Mexico.

Q What is it that he said to you, if you remember?

A We were talking about his situation.

Q Yes?

A And we also talked about his friends in Montreal.

Q Yes?

A About Mr. Cotroni.

Q Yes?

A And he was saying that he was not behaving well towards him.

Q When you say he was not behaving well towards him, who is the "he" and who is the "him"?

A That Mr. Cotroni was not behaving well towards Peno, towards Mr. Catania.

Q Did he say specifically what he meant?

A You mean, what matter he was referring to?

Q Yes. When Mr. Catania said to you that Mr. Cotroni was not behaving well towards him, did he say what it was that he meant by that?

A No, because we were just talking superficially. I wasn't interested.

THE COURT: Do you recall the exact words he used?

A Mr. Catania?

THE COURT: Yes.

A That he was not a good person. That they were doing -- That they were behaving badly towards him. Because he needed money, and he didn't have any.

Q Before you came here to court to testify, did

someone speak to you about this case?

A What about?

Q About coming to court to testify?

A I was asked whether I would like to be a witness and tell the truth about what happened.

Q Where was this you were asked, and by whom?

A Since I go to Italy, I start in Montreal -- because I have played there for several years, and I have friends there. And a man asked me whether I wanted to testify about this. You see.

Q Have you spoken to me about this case, sir?

A If I have spoken to the lawyer?

Q Yes.

A Yes, I have spoken to you.

Q Did I ask you to testify?

A We were just talking.

Q Who is paying for your transportation to New York?

A We have not yet paid.

Q Who do you anticipate will pay?

A I am here also to speak with the Rochester Soccer Team. So it is either the Rochester Team that pays, or I pay, or Mr. Pierson. I don't know. I don't know how to pronounce it.

Q Who is Mr. Pierson?

A He is the man who talked to me about this.

MR. IANNUZZI: I have no further questions at this time.

THE COURT: Any questions, Mr. Klar?

MR. KLAR: May I have one moment?

(Pause.)

MR. KLAR: No questions, your Honor.

MR. PUCCIO: Your Honor, I have an application that will take a minute.

THE COURT: The jury will be excused.

(The jury left the courtroom.)

MR. PUCCIO: I would just like a few minutes fefore I cross-examine the witness. I don't know who the witness will be until he is called.

THE COURT: I don't understand.

MR. PUCCIO: I would like about five or ten minutes to check on a few things to see if I want to ask the witness any questions. I don't know who the witness is going to be, and I can't check ahead of time.

MR. IANNUZZI: It is the same for the defense.

MR. PUCCIO: That is not the same.

MR. IANNUZZI: We didn't know Mr. Stewart was going to be called, but I am not going to object to five minutes.

THE COURT: Let the record be clear on everything Mr. Iannuzzi says. The day before Mr. Stewart gave direct testimony, didn't you turn over --

MR. PUCCIO: Yes, your Honor, I did.

THE COURT: Is that the same as this witness?

MR. IANNUZZI: No, not exactly.

THE COURT: While we are at it, I would like to say that you, of course, made no objection to statements made by Catania. I don't mind it, but I don't want Mr. Iannuzzi to have any idea I thought it was proper without a foundation. You may not offer the statements of a witness -- We are not talking about a defendant -- a witness, without first establishing a basis for the foundation.

MR. IANNUZZI: I thought I had done such.

THE COURT: You never did. If you think I am picking on you --

MR. IANNUZZI: No, your Honor, you are much calmer now, Judge.

THE COURT: When I get angry, I think it's for a reason. I will do it again if you do it again.

MR. IANNUZZI: I understand.

THE COURT: You don't believe it?

MR. IANNUZZI: I do.

THE COURT: You will understand, you wouldn't dare disobey an order I give in the next case.

MR. IANNUZZI: I don't --

THE COURT: It's Hornbook law, before you may introduce a statement of a witness, you must first ask the witness whether he made the statement. If he denies it, the statements that he said was a conversation in a prison --

MR. IANNUZZI: I asked if he sent anyone to Montreal to ask for money.

THE COURT: You must identify the time, place, conversation, before you may introduce the statement.

MR. IANNUZZI: That's why I thought I made the foundation. I asked physicially whether he needed the money for a lawyer or --

THE COURT: You know, I wrote on it two or three weeks ago.

MR. IANNUZZI: I appreciate your Honor --

THE COURT: Because the lawyers didn't understand that, so I thought I would take the time out and write on it.

(A recess was taken at this time.)

(continued on next page.)

CROSS-EXAMINATION

BY MR. PUCCIO:

Q Mr. Gallina, you indicated that you first met Mr. Catania in Mexico in October of '71, is that correct?

A Yes, for the first time.

Q And you had been sent to him by some people in Canada, is that correct?

A No, I went down there to play soccer.

Q But you indicated someone up in Canada had indicated in the event you're in Mexico, that you should go see Mr. Catania, is that correct?

A Yes, because he is Italian, since I speak Italian.

Q Who is the person or the people who indicated that you could meet Mr. Catania in Mexico?

A It was people who had gone down to Mexico on vacation and had met this man.

Q What are their names?

A There were many because there was a large table with many people, we were having dinner, before I left for Mexico and there were many people who are soccer fans and then they said there is in Mexico an Italian also who has a shirt store close to the El Presidente Hotel.

Q I understand, what are the names of the

people?

A I speak to a lot of people just because they are football fans but I don't ask them there names.

THE COURT: Try to answer the question, please. Try to remember the names of the people.

THE WITNESS: I just don't know them exactly.

Q Where did this dinner take place?

A In a restaurant in Montreal.

Q Was that Dante's Pizzeria?

A Yes, I used to always eat there.

Q And was the name -- was one of the gentlemen named Carlo Oreanas?

A He was present there. He was there.

Was Mr. Guido Orsini also present?

A No, that evening -- generally was but not that evening.

Q You know Mr. Orsini as well, don't you?

A I know many people.

Q Well, do you know Mr. Orsini?

A Yes.

Q You don't remember who specifically told you to look up Mr. Catania when you arrived in Mexico, is that right?

A No, because I wasn't interested -- it never

occurred to me.

Q Did you evermention to Mr. Catania that you knew Mr. Orsini?

A Yes.

Q Did you ever mention to Mr. Catania that you knew Carlo Oreanas?

A I told him that he played football -- soccer with me.

MR. PUCCIO: No further questions.

THE COURT: Any redirect?

MR. KLAR: May I ask a few questions?

THE COURT: First Mr. Iannuzzi, any redirect?

MR. IANNUZZI: Not at this moment, Judge.

THE COURT: Mr. Klar.

CROSS-EXAMINATION

BY MR. KLAR:

Q Mr. Gallina, do you know Frank Dasti?

A No.

Q Had you ever met him?

A No.

Q Had you ever seen him at Dante's Restaurant in Montreal?

A No.

Q Did Mr. Catania ever mention Mr. Dasti's

name to you?

A Never.

Q Mr. Catania asked you to stop at Montreal on your way to Italy to see Mr. Cotroni, did he indicate to you to send his regards or anything of that sort to Mr. Dasti?

A No, nobody.

Q Now, you had this conversation with Mr. Catania in Mexico City about your stopping up in Montreal and getting some money, did Mr. Catania tell you how much money he needed?

A No, since Mr. -- Mr. Catania since we are so close just said that he needed money, he didn't specify any sum. He didn't have money, he needed it urgently.

Q Was Mr. Catania having any difficulties at that time with the police?

MR. PUCCIO: I object.

THE COURT: Objection sustained as to form.

Q Do you know if Mr. Catania was having difficulties with the police?

MR. PUCCIO: Same objection.

THE COURT: Objection sustained.

Q Do you know if Mr. Catania had been arrested by the police during the period that you had this conversation

with him?

A No, I don't know.

Q Did Mr. Catania ever tell you that he was under investigation by the police in Mexico City?

A No, not to my knowledge, I never spoke to him about that.

Q Mr. Catania ever tell you that he needed money for a lawyer?

A Yes, when I was in the jail -- his wife also told me so.

Q When was it again that you saw Mr. Catania in jail?

A In December when he was arrested I saw him.

Q And at that time did Mr. Catania tell you that he needed money from Mr. Cotroni for his lawyer?

A Yes, he said that he needed money from many friends for the lawyer for the family.

Q Was Mr. Cotroni one of those people -- one of those friends that he wanted to help him with money for a lawyer?

THE COURT: Are we talking about the conversation in October of 1971?

MR. KLAR: The conversation at the jail in December.

THE COURT: Please fix the time.

MR. KLAR: I thought I did. I will ask him again.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. KLAR: (Cont.)

Q When did you have this conversation with Mr. Catania at the jail in Mexico City?

A In December of '72 when he was arrested.

Q Was it during this conversation that he told you that he wanted money from Mr. Cotroni for a lawyer?

A Yes.

Q Did he ask you at that time to go up to Montreal to see if you could get money from Mr. Cotroni?

A No.

Q Was he mad if you know -- withdrawn.

Did he appear mad at Mr -- that Mr. Cotroni did not give him any money?

MR. PUCCIO: Objection.

THE COURT: It calls for an opinion. You may ask him what he said or did or any other gesture he made, but not the conclusion.

Objection sustained.

Q What did Mr. Catania say to you when you told him, in the jail, that Mr. Cotroni would not give him any money?

MR. PUCCIO: I object.

THE COURT: May I have the question?

(Record read.)

THE COURT: Did you testify that when you were in the jail, that you told Mr. Catania that Mr. Cotroni would not give him any money?

THE WITNESS: Whether I said that to Pino Catania?

THE COURT: Wasn't that the question?

MR. KLAR: Yes.

THE COURT: Yes.

THE WITNESS: When I told Mr. Catania that Mr. Cotroni was not going to give him any money?

THE COURT: That was when you visited Mr. Cotroni in jail in December of '73 --

MR. PUCCIO: Catania.

THE COURT: When you visited Mr. Catania in jail in December of '72 you told him that?

THE WITNESS: The first time I told him that Mr. Cotroni would speak to Mr. Catania and he didn't speak to him.

THE COURT: Now, please answer the question, Mr. Gallina. I am referring only to the time that you visited Mr. Catania in jail in Mexico in December of 1972; do you understand that?

THE WITNESS: But I was there several times.

THE COURT: At any time that you visited

Mr. Catania in jail, only while he was in jail.

THE WITNESS: Two or three times.

THE COURT: In those times or as many times as you visited him in jail, on any one of those occasions, did you tell Mr. Catania that Mr. Cotroni would not give him any money?

THE WITNESS: Yes, sir.

MR. KLAR: May I continue?

THE COURT: Now, you may ask the question.

BY MR. KLAR:

Q Do you know if Mr. Cotroni gave any money to Mr. Catania?

A No, I don't know.

Q Mr. Catania tell you at any time while he was in jail that Mr. Cotroni had given him money?

A No, he was always complaining.

Q What did he say when he complained?

A Whatever a man in jail can say.

MR. KLAR: I have no further questions, your Honor.

THE COURT: Anything further, Mr. Puccio?

FURTHER CROSS-EXAMINATION

BYMR.PUCCIO:

Q Mr. Gallina, did you say that you told

Mr. Catania at one time that Mr. Cotroni would be in touch with him?

A You are asking me whether Mr. Catania asked me to speak to Mr. Cotroni?

Q No, I am asking you if you ever told Mr. Catania that Mr. Cotroni would get in touch with Mr. Catania directly?

A No, no, I didn't -- I didn't, no, no.

Because the first time that I went, I went because of soccer, I didn't know.

Q Well, when you came back from Montreal and spoke to Mr. Catania, did you indicate that Mr. Cotroni would be in touch with Mr. Catania?

A Yes, he had told me that Mr. Cotroni, would he speak to Mr. Catania.

Q And this was during October of 1971.

A No.

Q When was it?

A NO, in October of '71 I arrived in Mexico.

Q I'm sorry.

When was it that you told Mr. Catania that Mr. Cotroni would be in touch with him?

A In July of '72.

Q Where did you say -- where was --

A No, no.

Q I'm sorry.

A I'm giving you your answer, because in July of '72 I was in Montreal.

Q Then you returned from Montreal to Mexico?

A On October the 3rd, of '72.

Q Okay.

While you were in Montreal you had spoken to Mr. Cotroni?

A Yes, once.

Q About the money?

A Yes, about -- about what Pino had told me.

Q I see.

When you returned to Mexico, you told Mr.Catania that Mr. Cotroni would be in touch with him?

A That he would speak to him.

THE COURT: Answer vocally.

I didn't hear the answer.

THE INTERPRETER: That he would speak to him.

THE COURT: That's the question.

THE INTERPRETER: That's what he answered.

THE COURT: What was the answer?

THE INTERPRETER: That he would speak to him.

BY MR. PUCCIO:

Q You told Mr. Catania in October of 1972 when you returned to Mexico that Mr. Cotroni would be in touch with him? That is Mr. Catania?

A Yes, and I also called him from Montreal after I had spoken to Mr. Cotroni, the very same day, over the phone I told him.

Q You told him that Mr. Cotroni would be in touch with him?

A Was going to talk to him because Pino had given me the telephone number.

Q I see. So before you left Montreal you called Mr. Catania in Mexico?

A Over the phone.

Q And you told him that Mr. Cotroni would speak to him?

A Yes,that's it.

Q And then when you returned to Mexico you again spoke to Mr. Catania?

A I used to speak to Mr. Catania every day, 24 hours, I was at his house. I used to eat there.

Q I understand. But when you returned to Mexico from Montreal in October of '72, you again told Mr. Catania that Mr. Cotroni would be in touch with him directly concerning the money; is that correct?

A No, I asked him --

Q Oh, you asked him if he had spoken to Mr. Cotroni?

A I said, what happened, did he call you?

Q Now, during the year 1973, Mr. Gallina, while Mr. -- withdrawn.

Did there come a time during the year 1973 when you were aware that Mr. Catania was in the United States, in jail?

A Yes, I learned this from his wife.

Q Now, did there come a time during the year 1973 while Mr. Catania was in jail in the United States that he made a call to the La Dert Shirt Shop in Mexico and spoke to you?

A Yes, the first time I spoke to Mr. Catania at his home, it was -- the boy's birthday.

Q Well, you had a telephone conversation with Mr. Catania while he was in jail in the United States during the year 1973, right?

A Yes.

I talked once or twice or three times. I don't remember. I don't know where he was calling from.

Q Well, did you later find out that he was calling from the United States?

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A He only talked to me, he didn't tell me directly, "I am here."

Q Now, during any one of these conversations did you tell Mr. Catania that Mr. Cotroni and Mr. Orsini would recommend a lawyer for him?

A I didn't understand.

MR. PUCCIO: Can you read that?

THE COURT: Repeat that, please.

(Record read.)

A No, I didn't speak directly to him, I spoke to the wife. May I say something?

Q Yes, go ahead.

A Because I was with the wife and I felt sorry for her situation and so I said,"Why if Pino has all these friends -- these friends in Montreal why don't they take care of him?" And when Pino called his wife she told him that and Pino said, "No, I don't want to know anything about Montreal."

MR. PUCCIO: No further questions.

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MR. IANNUZZI: May I just have one or two further questions, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Gallina, when you spoke to Mr. Catania concerning going to Montreal, were you on your way to Montreal at that time?

A No, I was going to Italy.

Q And was it that he asked you to go out of your way to go to Montreal to make this request?

A He asked me a favor and since he is a friend, I did it, besides I had a girlfriend in Montreal, also.

Q What was the favor that he asked?

A Mr. Catania?

Q Yes.

A To speak to Mr. Cotroni, as I already said.

Q Did he ask you to fly to Montreal? Was that part of the favor?

A The favor was one that I had to talk to Mr. Cotroni. In order to speak to him, I would not have been able to speak to him if I had gone to Madrid.

Q Isn't that part of the favor, you had to change your flight from Madrid to Montreal?

A I changed it.

Q And did you stay in MOntreal after that or did you then leave?

A One day, I believe.

Q And then, during that period of time after you spoke to Mr. Cotroni, is that before you left for Madrid or for Italy or wherever you were going that you called Mr. Pino?

A Yes.

Q And when you returned to Mexico City, you did not return from MOntreal, then?

A Yes, I came back from Montreal.

Q Is it that you came back from Italy that you stopped at Montreal again?

A No. I am sorry. I just read something important. Always when I went to Italy, on the way back, I used to stop in Montreal, but on this time I was not able to because my club had sent me a cable and I stopped in New York for five minutes and then I took the other plane, and I didn't pick up my suitcases because it had not arrived and then it was forwarded later on.

Q And when you returned to Mexico, you testified at that time you asked Mr. Catania if Mr. Cotroni had gotten in touch with him; is that correct?

A As I said before.

Q And it was at that time that he said the things that you mentioned before about Cotroni?

A I am repeating the same thing again.

Q I won't ask you to.

MR. IANNUZZI: I have no further questions.

THE COURT: Any questions, Mr. Klar?

MR. KLAR: I have no questions.

MR. PUCCIO: Nothing further, your Honor.

THE COURT: You may step down.

Next witness.

(continued next page.)

FERNANDA MENDANICI , called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Is that Miss or Mrs.?

A Mrs..

Q And is that pronounced Man-de-nichi; is that correct?

A That's correct.

Q Are you married?

A Yes, I am married and divorced lately.

Q Do you have children?

A Three.

Q Where do you live?

A Montreal.

Q1 How long have you lived there?

A All my life.

Q Now, you seem to have no difficulty with English. Do you understand everything that I am saying?

A Up to now, yes.

Q If you have any difficulty or don't understand anything I ask you, would you be kind enough to inform me

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of that so I can rephrase the question or if you need an interpreter. All right?

A Yes.

Q Do you speak French?

A Yes, I do.

Q Would you speak loud enough so that the last juror can hear you?

A Yes.

Q Do you know a person by the name of Frank Cotroni?

A Yes.

Q And do you see Mr. Cotroni in court?

A Yes.

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DIRECT EXAMINATION

BY MR. IANNUZZI (Cont'd):

Q Is this Mr. Cotroni?

A Yes.

MR. IANNUZZI: May the record indicate that the witness has identified Mr. Cotroni.

THE COURT: It shall so indicate it.

Q How long is it that you know Mr. Cotroni?

A Well, many years as I was working as a barmaid in clubs for 17 years. I used to see him here and there, you know.

Q Did you ever work for Mr. Cotroni or in a club that he had an interest in?

A Yes, I had at one time.

Q And would you consider Mr. Cotroni a good friend of yours?

A Yes.

Q Do you socialize with him?

A Yes.

Q In 1971, was there an occasion when you went to Mexico?

A Yes.

Q And when, if you know, or recall, wasit that you went to Mexico?

A We left on January the 22nd. It was a Friday night.

Q When you say "we," who is we?

A I had a friend with me, a male friend with me.

Q And you and your friend were on your way to --

A To Mexico City for three days and then to Acapulco. That was our first trip down there, so we intended to visit Mexico City and then from there -- or take the bus or the plane to go to Acapulco for three weeks.

Q Now, when was the first time you were asked whether or not you would come to Court to testify?

A I was asked last week, a couple of days ago.

Q And by whom?

A By Mr. Pearson.

Q And where was that?

A In Montreal.

Q Did he ask you to bring your passport and some photographs with you?

A Yes.

Q Do you have those with you?

A Yes.

Q May I have them, please?

MR. IANNUZZI: May I ask that these be marked? I don't know if we can mark the passport. Perhaps

it can be deemed marked.

THE COURT: We always mark them.

MR. IANNUZZI: Very well, then, your Honor.

THE CLERK: Three photographs marked Defendant Cotroni's Exhibit R, S and T for Identification.

A passport marked Defendant Cotroni's Exhibit U for Identification.

(So marked.)

BY MR. IANNUZZI:

Q I ask you if you recognize Defendant's Exhibit U for Identification, and if you do, would you please indicate what that is?

THE COURT: Is that your passport?

THE WITNESS: That is my passport.

THE COURT: Are you offering that?

MR. IANNUZZI: No, I am asking her if she recognizes it.

THE WITNESS: Yes, I do.

Q When was it that that passport was issued to you?

A It was issued the same day that I left from Montreal to Mexico City.

Q You left on the same day that you got the passport?

A Yes.

Q What is the date on the passport?

A The date of the passport is marked on the 20th of January. I guess I must have had it a couple of days. When I went to get my passport at the place where you get the passport, it was the same day.

Q In other words, you picked up the passport and left the same day?

A That's right.

Q And then did you fly to Mexico City?

A Yes.

Q And did you meet anyone on the plane?

A I met Mr. Guido Orsini on the plane.

Q Do you know Guido Orsini from Montreal?

A Yes, in Montreal. He owned a club where I used to go all the time.

Q Was he a friend of yours?

A Not exactly a friend, but whatever you call it.

Q An acquaintance?

A An acquaintance, yes.

Q Would you prefer an interpreter?

A Not up to now, no.

Q All right. What if anything occurred on the plane and don't give us any conversations, but what occurred

on the plane?

A As we got in the plane, he was sitting there, so we said: Hello.

Q Who was he who was sitting there?

A Mr. Guido Orsini was sitting in the first class and as we passed by we said: Hello. We kept on and we sat. And that was it. Then, after we took off, he came by and started --

(Continued on next page.)

DIRECT EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

Q When you say he, you mean Mr. Orsini?

A Yes. He came by and started talking with my friend and started talking about being afraid of planes.

MR. PUCCIO: I object to the conversations, your Honor

MR. IANNUZZI: Don't tell us about conversations.

THE COURT: Not what was said, only what you said.

A He started drinking.

Q Who started drinking?

A My friend Guido started drinking and he took his coat off and he had quite a bit of money and papers and my friend said why don't you leave your papers and money with my friend so she can put it in her purse while they were walking around the plane drinking?

Q May I ask you this, I'd like you to see Defendant's Exhibit R, S and T and ask you if you recognize what those are?

A I don't get the question?

Q Do you know what they are?

A Yes, these are the pictures that we took on

the plane.

Q You took photographs on the plane to Mexico, that you're talking about?

A My boyfriend took these pictures, and I took just one.

Q Who appears in those pictures?

A Mr. Guido Orsini.

Q And who else?

A Myself and my boyfriend. One of the pictures is me sitting with Guido Orsini.

Q Which picture is that, there is a number on the back?

A 73CR898.

Q There is a letter on the back?

A R.

THE COURT: Defendant's Exhibit R is a picture of you and Mr. Orsini on the plane going to Mexico City. Is that correct?

THE WITNESS: Yes.

Q What are the others?

A The others are myself and my boyfriend and the number is T. The other one is Mr. Guido Orsini standing, with the letter S, in the plane.

Q These photographs were taken by your boyfriend

or yourself or Orsini on the plane going to Mexico City?

A Yes.

MR. IANNUZZI: I offer them in evidence.

THE COURT: Any objection?

MR. PUCCIO: May I see them, your Honor.

THE COURT: Show them to counsel.

MR. PUCCIO: No objection.

THE COURT: Ony objection, Mr. Klar?

MR. KLAR: May I look at them for a moment, your Honor?

THE COURT: Show them to counsel.

MR. KLAR: I have no objection.

THE COURT: Let them be marked.

THE CLERK: Defendant Cotroni's Exhibits R, S and T, previously marked for identification, are now marked in evidence.

BY MR. IANNUZZI:

Q And what was -- by the way, let me ask you so we don't have to keep referring to your boyfriend as your friend, what is his name?

A Mr. Morenzi.

Q Did you see Mr. Morenzi and Mr. Orsini drinking?

A Yes.

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Q Were they drinking much?

A They were drinking double cognacs.

Q Did they have many?

A Oh yes, they had many.

Q During this period of time when you saw them drinking, did you see Mr. Orsini do anything else?

A He took his coat off and he was losing the things that were in his pocket so my friend told him, why don't you give your papers and money to her so she could put it in her purse because I wasn't drinking, so he gave me a passport and some money and papers and I put it in my purse.

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(Continued on next page.)

MR. IANNUZZI: May I circulate these photographs, sir?

THE COURT: Give them to the foreman.

(Photographs circulated to the jury.)

MR. IANNUZZI: Should I continue?

THE COURT: Please do.

Q At that time, you say Mr. Orsini gave you certain things, is that correct?

A Yes.

Q What did you do with the things, you say you put them in a purse?

A In the purse and they went on the aisle to get other drinks.

Q Mr. Orsini and Mr. Morenzi?

A Yes. What I did, it seemed to be a lot of money, and being a curious woman I counted it. I was to carry it in my purse for six or seven hours. There was 50 bills of 100.

Q Did Mr. Orsini tell you you could count this money?

A Oh yes, because I said, "There is a lot of money." He said, "Do what you want. If you want to count it, count it."

Q When you got to Mexico City, I assume that

you got to Mexico City eventually, is that correct?

A Yes.

Q Did you give these documents and things back to Mr. Orsini?

A Yes. I gave it to him before we landed. We were all getting dressed, putting on our coats, and I gave it back.

Q What did he say?

A He put it back in his pocket.

Q Have you ever spoken to me about your testimony in this case?

A A little bit, yes, I did.

Q Did I say anything as to what you should say here?

A No, just told me to say the truth, that's all.

Q Who was paying for your flight from Montreal?

A A certain Mr. Pierson.

MR. IANNUZZI: Very well, I have no further questions at this moment.

THE COURT: Any questions, Mr. Klar?

MR. KLAR: No.

THE COURT: Any questions, Mr. Puccio?

MR. PUCCIO: No questions.

THE COURT: You may step down.

Next witness.

THE WITNESS: Can I keep my passport?

THE COURT: Is there any reason to retain it?

MR. PUCCIO: No reason as far as I am concerned.

THE COURT: Take the tag off.

MR. IANNUZZI: May Mr. Puccio and I approach the bench?

THE COURT: The jury may be excused.

(The jury left the courtroom.)

MR. IANNUZZI: Judge, I have a couple of witnesses who are on their way here. Unfortunately, they haven't arrived as yet. We may have some matters that Mr. Puccio and I could discuss.

THE COURT: Where is Mr. Catania?

MR. PUCCIO: Upstairs.

THE COURT: Bring him down. Why can't you examine him?

MR. IANNUZZI: I am not sure I am going to call him again. What I suggest is Mr. Cordvano --

THE COURT: Oh, Mr. Catania is right here, the marshal said.

MR. IANNUZZI: I have been informed by Mr. Puccio that Mr. Cordvano is here. I am wondering if I can't interview him and in the meanwhile the other witnesses will arrive.

THE COURT: Call the jury in, we will take our recess and come back on 1:00 o'clock and be prepared to proceed.

MR. IANNUZZI: It's five after 12:00 already.

THE COURT: I know. Tell us whether you want Mr. Catania or not so we don't have him here on the fourth floor. Will you keep him in the building?

THE MARSHAL: Yes, your Honor.

THE COURT: Do you intend to bring Mr. Catania back?

MR. PUCCIO: No. I brought him for defense counsel.

MR. IANNUZZI: I understand.

THE COURT: Hold him in the building. Apparently there is a question as to whether his testimony will be required.

THE MARSHAL: Yes, your Honor.

THE COURT: Thank you.

MR. IANNUZZI: Can we make that 1:30?

THE COURT: No, I'll make it a quarter after 1:00. That is a compromise.

MR. IANNUZZI: I have to see Cordvano.

MR. PUCCIO: We have him in the building. Your Honor, the Marshal informed me that the address that the Southern District had for Mr. Altamura was not

a correct address. He doesn't live at that address. We haven't been able to serve him. We will try to locate him. But up to this point we haven't been able to.

THE COURT: All right. I assume Mr. Iannuzzi wants to see Mr. Cordvano during this period of time between 1:00 and 1:15.

All right, seat the jury.

(The jury is in the jury box.)

THE COURT: I called the jury back only to advise you we are taking our luncheon break now. I ask you to come back at 1:15. The case will continue at 1:15, thank you. The jury is excused.

(The jury left the courtroom.)

THE COURT: 1:15, gentlemen.

(A recess was taken at this time until 1:15 this afternoon.)

A 2630

AFTERNOON SESSION

THE COURT: Ready to proceed?

MR. PUCCIO: I think Mr. Iannuzzi wants to take up something. I have a document which I turned over to the defendant Mr. Dasti, his attorney Mr. Klar, which I would like marked.

THE COURT: You turned it over to him?

MR. PUCCIO: I turned it over to Mr. Klar.

THE CLERK: Three-page report dated November 13, 1970, marked Government's Exhibit 3500-23.

THE COURT: Have you already turned it over?

MR. PUCCIO: Yes.

MR. KLAR: May I ask your Honor what the procedure is going to be on summations?

THE COURT: Well, I'm glad you asked because I have a note in front of me "order of summations". We presently have under consideration revising the order, having the prosecutor sum up first then the defendants and the prosecutor having a chance for rebuttal.

Judge Rifkind wrote about it in the Law Journal about two years ago. I have never directed that order of summation, and I won't do it unless the lawyers agree to it. In the Southern District, it is

presently being taken up. In the new criminal rules, as I understand, there are amendments to the omnibus crime bill. I know that wasn't what you were inquiring about --

MR. KLAR: No, I wasn't inquiring about there being some kind of a rebuttal --

THE COURT: What I am saying is if all the lawyers agree, including the Government, that that method be used, I would permit it. I understand it is the way summations are conducted in almost every place in the country except New York. I wouldn't insist on it. But as far as summations between the defendants are concerned, you will sum up first unless you agree otherwise. If the defendants agree they can sum up anyway or any order they want and take as long as they want.

MR. KLAR: With respect to the summations, in speaking to Mr. Iannuzzi, he indicated he was going to have some eight or ten witnesses today. Now, I don't think all of them are here as yet. I don't know if we are going to finish the case, but if we do at three or four o'clock, would your Honor want summations then?

MR. IANNUZZI: If we finish today, would your Honor expect the summations today, or could we put

them over to Monday?

THE COURT: Do you want them to go over to Monday?

MR. IANNUZZI: Yes.

THE COURT: Then they will.

MR. PUCCIO: Summations first thing Monday morning?

THE COURT: That's right.

MR. KLAR: Assuming the case is completed today, I understand there is no court in session tomorrow.

THE COURT: There is, but you won't be here.

MR. KLAR: You have a large calendar.

MR. IANNUZZI: Between now and Monday, we are to decide whether he goes first or we go first?

MR. PUCCIO: Whether I go twice you mean.

THE COURT: Yes. That is up to the lawyers. I can only urge it. You might as well get used to it if that is the way it's going to be.

I told Judge Bonsel that I was personally in favor of it. I checked with the other judges. As a matter of fact, Judge Dooling put it in its proper perspective, he said defendants are asked to sum up first and rebut an argument that has not yet been made. It's tough enough to rebut the argument that

has been made. He thinks the task is impossible to ask a defendant to go first not knowing what the argument is that is going to be made. The prosecutor tells you what his case is based on. You go in and tell the jury that he's all wrong and hasn't proven it. He must focus, he cannot go beyond the subject matter of the defendant's summation. He cannot bring in new matter. The only other question is the time limit, and he should have a time limit on rebuttal.

MR. IANNUZZI: I don't mean to interrupt, but there is no rebuttal of the rebuttal, sir, rebuttal?

THE COURT: No, ultimately it has to come to an end.

MR. IANNUZZI: Yes, sir. Your Honor, I spoke to Mr. Cordovano, the fellow who was brought here from Atlanta. Mr. Cordovano indicated to me four items; one, he spoke to his attorney and his attorney is to see him this afternoon, Mr. Patrick Wall. Two, he has never testified in any court and he did not testify in his own defense. In addition, he had -- he said the Supreme Court vacated the conviction to the extent of hearing with reference to the Giodano matter and to the proper authorization of the wire-tapping, etcetera, which is apparently presently pending. In addition, he has his appeal application

for a writ of certiorari to the Supreme Court. On the basis of all that, he indicated he will refuse to testify, or, at this point, until he talks to his lawyer.

MR. PUCCIO: Your Honor, my recollection of the cases in this area is,since he was convicted, he can't refuse to testify. Further, if he committed any violation in the Eastern District of New York, I am making the representation we won't prosecute him. The only prosecution will be in the Southern District which is based on transactions of which he already has been convicted.

THE COURT: When is Mr. Wall going to be here?

MR. IANNUZZI: He didn't say.

THE COURT: Well, I will find out. Get my office. I will direct him to testify and I will tell him if he doesn't testify, he may serve a six-month jail term and that will be in addition to whatever term he has. Of course, if he has been sentenced to fifty years, the six months won't mean anything.

MR. PUCCIO: Fifteen years, your Honor.

THE COURT: Well --

MR. IANNUZZI: On the basis of that, first of all, I am not suggesting I necessarily want him to testify, I haven't spoken to him because he refused to

talk without his lawyer.

THE COURT: You must say something definitely to me. Are you calling him?

MR. IANNUZZI: I haven't spoken to him about the matter.

MR. PUCCIO: Your Honor, the Marshal indicated to me he saw Mr. Wall in the building this morning and he has gone out trying to locate him.

THE COURT: You mean he has already seen his client?

MR. PUCCIO: I don't know. The Deputy Marshal just indicated to me --

THE COURT: Does Mr. Cordovano speak english?

MR. IANNUZZI: Surely.

THE COURT: Did he indicate --

MR. IANNUZZI: He indicated he was going to see his lawyer this afternoon.

THE COURT: He was going to see his lawyer?

MR. IANNUZZI: Yes.

MR. PUCCIO: Did he indicate he saw him before you saw him?

MR. IANNUZZI: No. All of us were there, Mr. Klar, Mr. Polakof and myself.

Judge, I have one difficulty and I hope your Honor will bear with me with reference to it. As you

know, I have been here every day and relying on the supply of my witnesses from outside of the jurisdiction on other people. There are several -- I expected about six or eight or ten witnesses, and also realizing we had a witness that took two hours on a matter your Honor didn't think should have taken that long --

THE COURT: It should have taken five minutes.

MR. IANNUZZI: It took two hours.

THE COURT: I know.

MR. IANNUZZI: May I suggest, some of the witnesses have arrived this date and I haven't spoken to them yet.

THE COURT: Has Mr. Pearson spoken to them?

MR. IANNUZZI: I assume so. I haven't spoken to Mr. Pearson. He hasn't made his connection --

THE COURT: You mean airplane connection?

MR. IANNUZZI: Of course. I assume -- he is supposed to meet me here. The difficulty is, in good heart, I can't put them on the s' and since I haven't spoken to them.

MR. PUCCIO: Why not?

MR. IANNUZZI: I suggest it is not the proper course in the event they would be totally irrelevant or perhaps they have --

THE COURT: Are you going to bring them up from

Mexico and Canada and find their testimony is irrelevant?

MR. IANNUZZI: Their family --

MR. PUCCIO: Certified by Mr. Pearson, can't be any thing wrong with them.

THE COURT: Certified?

MR. PUCCIO: I suppose so.

MR. IANNUZZI: Mr. Pearson seems to be everywhere. Occasionally his presentation of witnesses or anticipated testimony of witnesses turns out not to be what it is ultimately, so I find it necessary to prepare my own case rather than rely on Mr. Pearson.

THE COURT: When was the next witness scheduled to be here?

MR. IANNUZZI: Some witnesses for this afternoon.

THE COURT: Let's go on then. Are they here?

MR. IANNUZZI: I don't think so. I had a couple of witnesses subpoenaed from New York which I anticipate being here in a few minutes. I have some here and more on the way. I know it is an imposition on the Court and I have been working as assiduously as possible night and day and I haven't had time for other things, including a scheduled appearance before the Fifth Circuit Court of Appeals --

THE COURT: They don't want you, they just want your brief.

MR. IANNUZZI: That's not what they said to me. I would be delighted rather than flying four thousand miles.

THE COURT: What is the application? How much time do you want? The Court takes judicial notice that you have Mr. Polakof at counsel table.

MR. IANNUZZI: Of course.

(continued on next page)

THE COURT: How much time do you want?

MR. IANNUZZI: Mr. Polikof has been working --

THE COURT: I notice that. Sometimes I thought I heard him asking the questions.

MR. IANNUZZI: With his experience, I sometimes defer to his wisdom.

THE COURT: Why can't he prepare the witnesses?

MR. IANNUZZI: It's not a question that he can't, after he does, he would have to tell me.

THE COURT: If I had that kind of help, Moses Polikof, working for me, I wouldn't worry.

MR. IANNUZZI: May I suggest he is not working for me.

THE COURT: With you, I am sorry, Mr. Polikof.

MR. IANNUZZI: I understand. Then he hasn't spoken to these people, either.

THE COURT: How much time do you want?

MR. IANNUZZI: I don't know, I would like to take some time --

THE COURT: How much time do you want?

MR. IANNUZZI: I don't know, to take the rest of the day off, I am not sure --

THE COURT: What?

Did I hear right?

MR. IANNUZZI: That's what I was afraid to suggest.

THE COURT: Yes. I wonder if you have a slight idea of the burdens of this Court, and how much an hour or a half day means to this Court.

MR. IANNUZZI: I understand.

THE COURT: I will put on the record so that you and everybody else knows it, Judge Judd blacked out and fractured his nose yesterday -- two days. He called me while at the hospital because he was worried about the case he had just started, the case I referred to him. I called every Judge, and every Judge has a trial before him, and can't take it.

MR. IANNUZZI: I understand that. Your Honor is aware at the same time we are trying the case here, we have to go back --

THE COURT: You work very hard for the period of time that a case is on trial. I might say much harder even that the Judge for the period of time on trial. After this case, when is your next trial?

MR. IANNUZZI: I am supposed to start on Friday.

THE COURT: When will it start?

MR. IANNUZZI: It is a homicide case in Westchester County.

THE COURT: When is your next one after that?

MR. IANNUZZI: I have enough trials to last until the end of May.

THE COURT: You are the unusual trial lawyer, then.

MR. IANNUZZI: I will give you the names if you want them.

THE COURT: The usual trial lawyer tries about three or four cases a year. The civil lawyer has about fifty cases, but he settles forty-six.

And the criminal lawyer about twenty cases, and he settles fifteen. I am talking about the busiest trial lawyers. I am not being facetious about this. If you're busy from now until May, that is really busy. That is, if you are on trial every day. Then, do you take a month or so off?

MR. IANNUZZI: I haven't had a vacation in a couple of years.

THE COURT: You know, you need a vacation. Maybe that's the fault I've got to find with you.

MR. IANNUZZI: I have a trial on Friday --

THE COURT: You know you can't get the day off, how much time do you want?

MR. PUCCIO: Ten minutes?

THE COURT: That's about what he needs. We will cut it down.

MR. IANNUZZI: May we have until 2:35?

THE COURT: That doesn't sound too bad. 2:30.

Don't go out of the courtroom. I want to tell the jury.

Do you mind if the jury looks at the pictures?

MR. IANNUZZI: They have already seen them.

THE COURT: Only half.

MR. IANNUZZI: We can wait.

THE COURT: All right, wait until they come back. All right.

(The jury is in the jury box.)

THE COURT: We are going to take a long recess until 2:30. So if you want to go down and have some coffee or a soft drink, go ahead and do it. You needn't stay in the jury room.

If you meet any of the litigants, including their lawyers, in the hallway or any place in the building, or outside the court house for that matter, don't expect them to stop and talk with you and don't expect me to talk to you if I meet you. It is improper. The jury must be isolated against any kind of pressure, and even subtle pressure. It's not because they are discourteous or they don't want to speak to you, it's only because it's wrong. If you see nothing more than a nod of the head, you understand it's all they may properly do.

2:30.

(A recess was taken at this time.)

(The jury is in the jury box.)

THE COURT: All right, Mr. Iannuzzi.

MR. IANNUZZI: If your Honor pleases, at this time I would like to mark something for identification and in evidence by way of stipulation with the Government.

MR. PUCCIO: It is so stipulated.

THE CLERK: Death Certificate marked Defendant Cotroni's Exhibit V in evidence.

(So marked in evidence.)

MR. IANNUZZI: This is in French, and perhaps Mrs. Clancey can read it to the jury.

THE COURT: Yes.

MRS. CLANCEY: "Parish of St. Joan of Arc, 2295 Chambly Street, telephone 521-5102, Montreal 402. Death Certificate.

"I, the undersigned declare and certify that funeral services for Mr. Jacques Cesormiers, husband of Dianna Herbart, deceased. The deceased was held on December 26, 1970 at the Church of St. Joan of Arc in Montreal on the 31st of December, 1970." Signed by the priest and the signature is unintelligible."

MR. IANNUZZI: If your Honor pleases, the United States Government and the defense have further stipulated that Mr. Jacques Cesormiers referred to in the death certificate is the brother-in-law of Frank Cotroni.

MR. PUCCIO: That is correct, we stipulate.

MR. IANNUZZI: I call Mr. Trolley.

G O R D O N C . T R O L L E Y , a witness called herein, was Sworn by the Clerk of the Court, and testified as follows:

DIRECT EXAMINATION

BY MR. IANNUZZI:

MR. IANNUZZI: May I proceed?

THE COURT: Yes.

Q Mr. Trolley, what is your occupation?

A I am the credit manager at the Hotel Waldorf-Astoria, New York City.

Q For how long have you been so employed?

A Eight years.

Q Sir, I ask you to look at Government's Exhibit 30 in evidence, and ask you if you can recognize what that is?

A It is the registration card, and an accompanying room bill for the individual named on the registration card.

Q The individual is a person by the name of Catania?

A That is correct.

Q What is the date he came to your hotel, sir?

A January 11, 1971.

Q At what time, sir?

A At 1:03 P.M.

Q On January 11th?

A (No response.)

Q Is that correct, sir?

A And departed -- Yes, that is correct.

Q You can tell us when he departed.

A January 12, thirty-three after 7:00 o'clock in the morning.

Q 7:33 in the morning on the 12th?

A Correct.

Q And, sir, is that a registration for a single or double-occupancy?

A Single occupancy.

Q Does the record indicate that is so?

A Yes, and it is a single rate, too. When only one party registers, the one party's signature appears.

Q If two parties register, there would be two signatures?

A It would be indicated. In other words, if it was Mr. and Mrs., it would so indicate. If it was Mrs. Jones and Mrs. Smith, it would indicate.

Q Can you determine what the rates were on that particular room on that date for both single and double?

A I know in 1971 the single rate was $34 a day, and the twin or double rate was $46 a day in 1971.

Q How much was paid for this?

A $34 a day, plus taxes.

Q Would that indicate to you how many people stayed in the room that day?

A One person.

MR. IANNUZZI: I have no further questions.

THE COURT: Mr. Klar?

MR. KLAR: No questions.

THE COURT: Mr. Puccio?

CROSS EXAMINATION

BY MR. PUCCIO:

Q Mr. Trolley, you have been in the hotel business for eight years?

A Yes. All my life.

Q If I checked into the Waldorf Astoria Hotel today and asked for a single room, and someone else spent the night there, would there be any way, from your records, to determine that?

MR. IANNUZZI: Objection, speculative.

THE COURT: Overruled, I will allow it.

You may answer.

A Well, I would say it would be very risky for anyone to do anything like that.

Q Well, would your records indicate a person stay-

ing in a room who did not register?

A No, we would have no way of knowing.

Q You think that might have ever happened?

THE COURT: Objection sustained.

MR. PUCCIO: No more questions.

MR. IANNUZZI: I have none, sir.

THE COURT: You may step down.

MR. IANNUZZI: Thank you, sir.

I call Frank Cotroni, Junior.

THE CLERK: Document marked Defendant Cotroni's Exhibit W for identification.

(So marked for identification.)

F R A N K C O T R O N I , J R ., a witness called herein was Sworn by the C rk of the Court, and testified as follows:

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Cotroni, do you speak English?

A Yes.

Q Would you prefer to have an Interpreter?

A It's all right, I speak English.

Q Would you speak loudly enough for this last juror to hear you?

A Yes.

Q If anything I ask you you don't understand or

confuses you, would you be kind enough to tell me so I can ask you a different way?

A Yes.

Q Will you please speak and answer loudly?

A Yes.

Q How old are you?

A Fourteen.

Q Do you remember going to Acapulco in 1971, 1970? Do you remember going to Acapulco twice?

A No.

Q Do you remember going to Acapulco in December of 1970?

A Yes.

Q Do you remember when you went home?

A Yes.

Q Do you know when it was?

A In January.

Q Do you know what date?

A The 8th, I think.

Q I'm going to ask you to look at Defendant's Exhibit W, and ask you if you recognize what that is?

A That is my ticket.

Q That was your ticket?

A Yes.

Q What ticket?

A Airplane ticket.

Q Was that the ticket used when you went to Acapulco and went home again?

A When I went home.

Q Would you speak up?

A When I went home.

Q When you went to Acapulco, is that the airplane ticket?

A Yes.

Q Does it indicate when you went home?

A Yes.

Q What does it indicate?

A The 8th of January.

Q Did you go home on that date?

A Yes.

Q With whom did you go home?

A Two of my cousins and my little brother.

Q Who else?

A My father.

Q He took you back to Montreal?

A Yes.

MR. IANNUZZI: I offer that into evidence.

MR. PUCCIO: No objection.

A 2650

Cotroni - direct

THE COURT: Let it be marked.

THE CLERK: Defendant's Exhibit W, previously marked for identification, now marked in evidence.

(So marked in evidence.)

MR. IANNUZZI: I have no further questions.

MR. PUCCIO: No questions.

THE COURT: You may step down.

Next witness.

MR. IANNUZZI: The defendant Cotroni rests, if it please the Court.

MR. KLAR: The defendant Dasti rests.

THE COURT: Any rebuttal, Mr. Puccio?

MR. PUCCIO: I don't believe so, your Honor.

THE COURT: Does the Government rest?

MR. PUCCIO. We rest.

THE COURT: We will suspend at this time until Monday.

MR. IANNUZZI: May I just -- If it please the Court, I don't mean to interrupt you, but may I ask the last witness to return to the stand?

THE COURT: All right, come back to the stand.

F R A N K C O T R O N I , Jr., resumed the stand, and further testified as follows:

DIRECT EXAMINATION

A 2651

Cotroni - direct

BY MR. IANNUZZI: (continuing)

Q When you went back to Montreal, Frank, what was the purpose of going home?

A I had to go to school.

MR. IANNUZZI: I have no further questions.

MR. PUCCIO: No questions.

THE COURT: All right, you may step down.

You now rest?

MR. IANNUZZI: Yes, sir.

THE COURT: Mr. Klar?

MR.KLAR: I rest.

THE COURT: Mr. Puccio?

MR. PUCCIO: We rest.

THE COURT: I'm going to ask you to return on Monday. Don't come in tomorrow. On Monday the lawyers will sum up, and if it doesn't take or go into the afternoon, I will then Charge the jury. I suggest to you that you tell the folks at home it's possible you will be here very late on Monday. It's just possible.

(continued on next page.)

THE COURT: (continuing)

GA 1PM

It is a long weekend and it is most important at this point that you do not talk about the case. It is most important that you do not read the newspapers. Do not talk to anyone about it. You are the judges. Be very careful about outside influence, about talking to anyone about the case.

When you reassemble on Monday morning, please do not talk about it amongst yourselves.

When you come in Monday morning, you will probably find a menu for your lunch. I will order in lunch for you on Monday, so you do not have to go out. It is easier for me to control the hours.

Each juror will make a selection for lunch, and then we will put the order in.

The jury is excused.

THE FOREMAN: I work for the City. Do I have to report back to work tomorrow or not?

THE COURT: That is up to you.

It is up to you, and it is up to your employer. but the point is, you are not being paid here tomorrow, so you might want to go back to work.

JUROR NO. 12: What time Monday?

THE COURT: 9:30.

The jury is excused.

(Jury leaves courtroom.)

THE COURT: Have you agreed on the order of Summation, and whether you will change the traditional practice here, or do you want to go along with what has been done?

MR. IANNUZZI: Frankly, we have not discussed it. But my fancy is tickled by the new procedure, and perhaps we will be able to decide on it.

Of course, Mr. Puccio will have something to say.

THE COURT: You will have to tell him that immediately, so when he goes over the transcript he will understand that you are going to apply.

I do not know whether you agree with it?

MR. PUCCIO: My tendency is to stick with the old procedure, which I prefer. I do not think it's necessary for the Government to have two Summations.

THE COURT: That is unfortunate.

MR. PUCCIO: If everyone is strongly in favor of it --

MR. IANNUZZI: Could we do this --

THE COURT: I do not think there are advantages or disadvantages. I think it sharpens the issues before the jury.

As I say, I won't direct it. I won't even apply pressure.

MR. IANNUZZI: I tell you this, that I would have no objection if we summed up first and Mr. Puccio summed up second, and we had the rebuttal.

THE COURT: Do you want the burden of proving your innocence?

MR. IANNUZZI: No, not that.

THE COURT: You cannot have it both ways.

MR. IANNUZZI: May we consider it and discuss it, and give your Honor -- May Mr. Puccio, Mr. Klar and I discuss it and make the determination?

THE COURT: Yes.

It won't affect me. I think the parties should know, and there should not be a change if it is decided one way or the other. I imagine the summations will go differently for the Government, particularly if you know that there is going to be an answer to what you say or claim the evidence is, and on the other hand, the defendants know they are going to have to stick close to the record and the issues.

Then, the other question is, the length of time allowed for rebuttal. I would say it should not go beyond fifteen or twenty minutes. It is not a rehash of what you said.

MR. PUCCIO: That is where I think I would have a problem with the length of time of the rebuttal. It

would seem to me that the rebuttal --

THE COURT: Do you want it proportionate to the time the defendants use? Suppose the defendants use one hour?

MR. IANNUZZI: Each, sir?

THE COURT: Why should you get more than twenty minutes?

If they use two hours, then you should get forty-minutes.

MR. IANNUZZI: Then we'd have two Summations for the Government.

THE COURT: Of course it is two summations, just like rebuttals are. The point is, it restricts the Government in that they do not go beyond the matters that you argue.

Let us understand this, because apparently we differ on the meaning of words. If you raise an issue, and you cite evidence, and the Government thinks your recital is one-sided, that will not prevent them from reaching any place else into the record, and showing how that argument is fallacious.

I am not saying that they are confined to the evidence that you cite. The Government would be confined to the issues that you raise.

MR. IANNUZZI: My only difficulty with the entire

procedure, just as we are discussing it on the record informally at this moment, is that I imagine unless there is specifications, it will stretch out into a second Summation. Forty or fifty minutes would be the same as a first Summation.

THE COURT: If you are worried about it, just do not go along with it. I think there are advantages to both sides. I do not care. I care about putting the issues before the jury, if they can be put clearly before the jury, instead of wandering all over.

After you get through, then the Defendants will answer. That still leaves it indefinite. The Government then comes along and narrows it and says, "Here is what we say about it."

If the Government weren't limited, obviously then it wouldn't serve the purpose intended. On the other hand, if the Government were limited to the evidence to rebut the claims by the defendants, that wouldn't be fair, either.

MR. IANNUZZI: What I would suggest is this -- again most respectfully -- perhaps the new method is just a smidgeon short in the sense that if we each had fifteen minutes to really sharpen the issues right down, that would perhaps be the best method.

THE COURT: That you would take fifteen minutes,

Mr. Klar would take fifteen minutes, and Mr. Puccio would get fifteen minutes?

MR. IANNUZZI: Well, either --

THE COURT: All that means is that you and Mr. Klar would get together and say, "We'll cover the whole case and go as far as you can."

Mr. Klar might talk about what I consider tangently relevant -- I don't want to say totally irrelevant, because you would resent that -- matters like whether Mr. Cotroni was angry when Mrs. So-and-so visited, and Mr. Puccio would have to answer that argument and take time, or it might be the other way around, you might raise an irrelevant issue. I would imagine the Government would be required -- not that the rules would require it -- but good sense would require that the Government answer every issue, so that if you had enough defendants, you could touch on every possible bit of evidence in the case and require the Government to answer it in effect in the same time limit that it took both of you or each of you to sum up.

MR. IANNUZZI: But if we had the same time restrictions, perhaps it would even the whole thing out.

In other words, we'd be under a time stricture, as Mr. Puccio would, to answer perhaps loose ends, and I think that procedure --

THE COURT: I have never put a time limitation on any lawyer on Summation.

MR. IANNUZZI: I am talking about the rebuttal.

THE COURT: If you take fifteen minutes --

MR. IANNUZZI: Maybe I didn't make myself clear: I think the new procedure is intriguing, and I think it leads to the ability of the attorneys to answer questions that have arisen, but I think that perhaps the best method might be that after rebuttal there be fifteen minutes given to each, and then all of the issues could be drawn.

THE COURT: You do not have the rebuttal.

MR. IANNUZZI: That is what I am suggesting.

THE COURT: I see, you want to change the rules. They have not even been enacted, but --

MR. IANNUZZI: I understand that.

THE COURT: -- you want to change them.

MR. IANNUZZI: Just to sharpen the issues, fifteen minutes so there is no loose ends.

THE COURT: It sounds very equal, fifteen minutes, fifteen minutes, fifteen minutes. Sounds very equal, you will have the last half an hour.

MR.IANNUZZI: The Government now has the last two hours.

THE COURT: You could have the first five hours.

MR. IANNUZZI: I understand that. What I am suggesting is that this has been the procedure for years and years. I do not think the fact that somebody has to be the last necessarily is the determining factor in the case, because many cases have been won by prosecutors even though they were the last to answer the issues --

THE COURT: You think that is what does it?

MR. IANNUZZI: I do not know what does it.

THE COURT: I do not want to disenchant you. We have had some statistics. Two years ago at our judicial conference, I think, Mr. Orgell of our Clerk's Office presented the statistics on how effective Summations are, and if the statistics are accurate --

MR. IANNUZZI: We are wasting our time.

THE COURT: I wouldn't say that. It has some effect, but when you are cutting it as thinly as who goes last and who goes first, and who gets the last word, and believe that the jurors remember only the last thing that is said --

MR. IANNUZZI: I don't think that at all.

THE COURT: I am glad you do not, because too many lawyers underestimate jurors.

MR. IANNUZZI: Your Honor indicated that I wanted to be last because that would end the day. I think it would sharpen the issues.

THE COURT: I do not think you should have the last word as long as the Government has the burden of proving guilt. If you want to change the burden, maybe we should change our whole judicial system. I am not opposed to it, but I want to see some sense to what is being done. I have not seen anything yet. This is a proposal. I am not urging it. It has to be all three, and if you do not want it, if you do not like it, you do not have to go along. You do not have to tell me why or make excuses. We will do it as we have been doing it.

The only danger is, if the lawyer does something new, and it turns out to be an unhappy result, the client will blame it on the lawyer.

All I can say, as I understand it, it is being done all over the country, except in New York, and it will be beginning in New York very soon. I predict before the summer, we will have a rule which changes it all.

If you have been reading the trials in the District of Columbia, you will read that that is the way it is there.

MR. IANNUZZI: I understand it is.

THE COURT: It is done all over except here. It strikes me as being the fairest thing to do. If I were to consent to it as a lawyer or not, I do not know. I'd

take a lot of things into consideration, including the criticism by my client that I consented to something that I shouldn't have done.

MR. IANNUZZI: Yes.

THE COURT: I am considering it only sitting here, and my interest is saying to the jury, in effect, these are what the issues are, these are what the litigants are contesting over, and I say that is the better way to do it -- the proposed way -- rather than the way we have been doing it. That's all. You can decide among yourselves.

MR. IANNUZZI: But Your Honor did not come up with any fast rule, as bar as the rebuttal time. Would that be fifteen minutes?

THE COURT: I am only suggesting not more than fifteen or twenty minutes, or if that sounds too long, and you cannot tell, because you do not know how long the defendants are going to be -- This is just off the top of my head -- maybe a percentage of the time that the defendants use in summation.

The only requirement that I make is that the Government does not go beyond the subject matter of the Summation of the defendants.

MR. PUCCIO: On that point, I imagine that Catania's credibility will be an issue during the de-

fense's summation.

THE COURT: If they talk about his record, then you can talk about his record. You can do that for all the time allotted to you. If they talk about his alleged inconsistent statements, talk about that. If they talk about his animus towards Mr. Cotroni, then that.

But if the defendants refer to only one of those, then you are only going to talk about one of them. The fact that they talk about credibility, does not mean you can talk about all of Mr. Catania's testimony. Why should you bring in something new that they can't reebut? That is why they do not have the last chance. They have a chance to say, "Answer that," and the Government must answer it. You are not limited in your initial Summation, say anything you want, as long as it's reported by the record.

I see nothing unfair about it, and you had better get used to it.

MR. PUCCIO: The question is, should I get used to it next Monday, or next May --

THE COURT: Or maybe have one of your associates. Maybe if the test is all right, then maybe you will try it.

MR. PUCCIO: That may be so.

THE COURT: Do not be afraid to lose, just do a

good job.

MR. IANNUZZI: My only problem with the procedure is an unlimited amount of time -- an unlimited amount of time for a second Summation.

THE COURT: I will not allow unlimited time. It is a question of what the limit is.

MR. IANNUZZI: I think it should be fifteen minutes.

THE COURT: That may be fair.

MR. IANNUZZI: We will discuss it.

THE COURT: The rebuttal must have a time limit.

MR. IANNUZZI: Yes.

THE COURT: The proposal will have it. I do not know whether the proposal has a specific time limit now. The Southern District is discussing it. I do not know if I am giving away State secrets, but Judge Bonsel told me it was under discussion, and he asked me how I felt about it, and I told him I was enthusiastic about it, and it makes sense to me.

I guess it is done in Canada, is that right, Mr. Patenaude?

MR. PATENAUDE: Excuse me, I was not listening?

THE COURT: Does the prosecution sum up first, and then the defendants, and then the prosecution again in Canada?

MR. PATENAUDE: That's the way it is done.

THE COURT: I was on vacation in Kingston, and a -- What is the name --

MR. IANNUZZI: A busman's holiday?

THE COURT: -- and I went into a Court, and I asked the lawyers about it, and I asked the Judge about it. There are some instances in Jamaica where our procedure is followed, and there is some discretionary authority on the part of the Judge. I think it is where a defendant really has no case, where a defendant just says, "The Government hasn't proven its case." I think there they do follow the old system, but if the defendant puts in some case, they say, that is the way it is done.

MR. IANNUZZI: I just wonder if you have heard from Mr. Wall?

THE COURT: We called his office, he was not there. He was someplace else.

MR. IANNUZZI: We haven't had an opportunity to call him because he has refused to testify.

THE COURT: I have nothing to do with that. You said you rested. Do not raise that as an issue on appeal.

MR. IANNUZZI: That is why I ask at this time, before I let my footprints cool on this floor. I could not use somebody that would take the Fifth Amendment.

I am not saying that I would.

THE COURT: Why do you place the burden on me to find out whether Mr. Wall is in the building?

MR. IANNUZZI: I am not placing the burden on your Honor. I know your Honor made some phone calls. I am inquiring of the result.

THE COURT: He was not in his office. I assumed that he was here. They do not know where he was.

The Government brought a man in from Atlanta --

MR. PUCCIO: Cordovano.

THE COURT: Where does he come from, Atlanta?

MR. PUCCIO: Atlanta.

THE COURT: Do you want to hold him here?

No decision seems to be final. The defendant says rest. He tried to talk to Mr. Cordovano, and he said he refused to testify, and after that you say, "I rest." And now you want to say to me to hold him?

MR. IANNUZZI: I just inquired if he changed his mind.

THE COURT: Suppose he changed his mind?

MR. IANNUZZI: Then I would be able to talk to him.

THE COURT: Go ahead and try and make any application that you want.

MR. IANNUZZI: Very well. Thank you, sir.

THE COURT: Monday morning at 9:30.

I think by this time nothing seems to be certain. I thought we were having Summations and Charge.

All the Requests to Charge by the defendant are granted. I do not see anything in them that you could dispute.

MR. PUCCIO: I just got a copy of them.

THE COURT: I see nothing exceptional.

MR. PUCCIO: I really have not gone through them.

THE COURT: If you can convince me by proof beyond a reasonable doubt that there is anything wrong in those -- Incidentally, that does not mean that I will Charge --

MR. PUCCIO: You mean, in the same words?

THE COURT: I am not saying that I will Charge in haec verba. I am saying in principle that it is correct.

MR. IANNUZZI: Yes, sir.

THE COURT: I see nothing wrong with them. Most of my Charge will be given extemporaneously. I do not know what is going to be said until I hear it myself.

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THE COURT: I have the proposed rule on my desk. By July 1 that will be the rule, so everybody get used to it.

MR. IANNUZZI: It was Mr. Puccio who did not want to use that method.

THE COURT: Voluntary means voluntary. I wish he did. I do not think he would have lost anything by it.

MR. PUCCIO: I think we saved some time.

THE COURT: I think so too.

(Recess taken.)

THE COURT: Please be seated, gentlemen. Close the doors.

We can remove all that, the head sets and the books. I won't refer to them.

Seat the jury.

(Jury present.)

THE COURT : Mr. Foreman, ladies and gentlemen of the jury:

We have arrived at that point in the trial where it becomes my duty to charge you on the applicable law.

The caption of this trial is, The United States of America against Frank Cotroni and Frank Dasti.

Both defendants are charged with two separate crimes, one, a conspiracy count, the other, a substantive count, and I will explain the meaning of those terms later.

We have, in effect, four trials, and you must judge each defendant separately on each count. I might use the term "defendant" or "accused."

I might say "defendants" or "accused," referring to both accused, but all the terms mean the same unless I single out a defendant to whom I believe a specific principle applies.

If I say "defendant," it means both.

If I say "accused," it means both.

I think a good starting place is to fully understand what we mean when we talk about a jury trial and what each of the participants in the trial are obligated to do, what their roles are.

Our system is called an "adversary system." It is distinguished from other systems in the world. Other systems are called the "accusatory system."

I won't tell you about that. It is unimportant. Here, the lawyers are adversaries.

They represent litigants; they are protagonists; they are partisans.

They do their job most effectively by taking the position of their client and fighting for that position and they take sides over contested issues.

The Government on the one hand, and the defendants on the other or on occasion, the Government on one hand and one defendant on the other. The theory is that when lawyers of comparable ability contest over an issue, the evidence will be developed during the trial for the jury to see.

The jury and the Court, on the other hand, are impartial, objective, very much interested, but objective.

The jury is the sole judge of the facts, and by that we mean that from the evidence that is before the jury, before it makes the decision, makes the determination, the finding as to what happened.

The Court has nothing whatever to do with that. You have your special sphere and I have mine.

My role is the judge of the law, and as the judge of the law, I respect your authority to judge the facts. I do not intend in any way, to indicate to you that I have any opinion whatsoever, as to how you should find and I have no opinion. I leave that solely to you. You, on the other hand, must respect my authority as the judge of the law and

accept the law as I charge it. You may disagree with the law, you may not like it, you may feel that you could have promulgated or fashioned a better law, a fairer law, but just as it is not my business to poke my nose into your domain, so it is not your business to poke your nose into mine.

If we fully understand each role that every participant has in the trial, I think that we will understand why certain things are done during the trial.

For example, my rulings in this Court and this trial, my rulings are final for this trial and the lawyers must abide by those rulings.

You should not, in any way, have any ill feeling or show any antagonism, whether it is conscious or subtle, against any lawyer because he took objection or argued with the Court. That's the lawyer's job.

Don't feel because a lawyer took many objections and one lawyer took none, that that particular lawyer is offensive in any way or doing a poor job, and you just think of nothing but understanding that the lawyer is there doing his job, performing the very important work that he is assigned to do.

You heard the presumption of innocence alluded to any number of times, during the trial. It is a time honored presumption in Anglo-American law. It means that you must conclude at the outset, that both defendants are innocent of both charges in this indictment and that presumption remains with the defendants throughout the trial and throughout your deliberations and is overcome only if and when the Government has proved the guilt of the defendants by proof beyond a reasonable doubt.

(continued next page.)

THE COURT: (continuing) I said to you at the outset, and it was repeated to you during summations, that your job here is not to determine whether the defendant is innocent, but rather to determine whether the Government has sustained its burden of proof, to wit, that the defendants committed the crimes charged.

I often refer to the Scotch verdict. You have probably heard the term used. In Scotland there are three verdicts, guilty, not guilty and not proved.

In this country we have only two verdicts, guilty and not guilty, and not guilty includes not proven.

Now, what is a reasonable doubt? A reasonable doubt is a doubt which a reasonable person has after considering all the evidence. It is a doubt based on reason and common sense and on the state of the record, which means the evidence in the case. It is not a doubt based on some emotion or feeling that might arise from a distate to perform an unpleasant job of finding somebody guilty after all the proof is in and the Government has proved its case beyond a reasonable doubt. It is not a vague or speculative doubt or imaginary doubt. A reasonable doubt is the

kind of doubt that would make a reasonable person hesitate to act in a matter of importance in his or her own life. Proof beyond a reasonable doubt is, therefore, proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important and weighty of your own affairs.

The Government's burden is not to prove the guilt of the defendant beyond all doubt, nor is the Government's burden to prove that every bit of evidence offered before you in this trial is true beyond a reasonable doubt.

The Government's burden is to prove each and every essential element of the crime charged by proof beyond a reasonable doubt, and I will tell you what the essential elements of each crime charged are.

We fragment the charge so that you can focus on all the elements and that's what the Government has to prove beyond a reasonable doubt.

Reasonable doubt may arise from the failure of the Government to produce evidence.

The defendants did not have to prove their innocence, the defendants are not obligated to offer any proof.

On the contrary, the defendants have a right to rely on the failure of the Government to prove its case beyond a reasonable doubt.

The weight of the evidence is not necessarily determined by the number of witnesses that are produced. It is determined on the credibility of all the evidence that is produced.

What is evidence?

Evidence is the method that the law uses to prove or disprove a disputed fact. It is generally classified as direct evidence and indirect or circumstantial evidence.

I will give you definitions of both. The definitions will be meaningless until I give you an example of both.

Direct testimony is the testimony of a witness as to what that witness saw or heard.

Circumstantial evidence is the method of proving or disproving a disputed fact by drawing reasonable inferences, based upon your experience and good common sense from facts that are established, and this is the example:

Assume that you were sitting here as a juror in a personal injury case, A suing B for money

damages.

A claimed that B passed a red light at a particular corner without stopping and struck her causing the injuries.

B, the defendant, says, "No, I stopped at the light and then proceeded."

Now, of course, the first question is the contested issue. Here it is easy to identify. The plaintiff says the car passed the stop sign without stopping. The defendant says "No, I stopped first and then proceeded."

Let us assume that my courtroom deputy, Mr. Adler, and myself, were on that corner and I was speaking with him at the stop sign on that corner.

Let us assume I was facing the roadway and the sign was in full view.

If I were called to testify, I could give direct testimony of that disputed fact. I'd say I was standing on the corner speaking with Mr. Adler and the car, driven by the defendant, which might be described as a 1975 White Cadillac, was travelling at about 65 miles an hour and passed the traffic sign without stopping.

I saw it. It was in direct view.

Mr. Adler cannot give direct testimony as to what occurred, but he could testify to circumstances from which the jury may draw the reasonable inference that that motor vehicle passed the stop sign without stopping.

He might testify that he was speaking with me and with his back to the roadway, and the stop sign, but the White Cadillac came within his peripheral vision, travelling at about 65 miles per hour, that it passed him, and when he turned to his left, two or three seconds later, about a hundred and fifty feet later, he again saw the white Cadillac travelling at the same speed and it struck plaintiff A.

Now, from those circumstances -- what circumstances? The Cadillac was travelling about 65 miles per hour. It took about two or three seconds to traverse 150 feet. I think it is a fair inference, based on reason and common sense, for you to infer from Mr. Adler's testimony alone that that car passed the stop sign without stopping.

So you have issues in this case from which you will be called upon to determine a disputed fact through circumstantial evidence. The law does not regard one type of evidence as a better quality than

the other.

At times, direct evidence is of a better quality, and at times, circumstantial evidence is of a better quality.

The law requires that both on the direct and circumstantial evidence, the Government prove the guilt of the defendant by proof beyond a reasonable doubt.

I have used the term "inference" and I have used the term "presumption."

An inference is a conclusion which reason and common sense leads the jury to draw from facts which have been established by the evidence in the case.

In such instances, the jury may draw the inference. It is a conclusion which the jury may draw. It is discretionary, based upon experience, reason and good common sense.

A presumption, on the other hand, is a conclusion which the jury must make and remains, prevails, unless and until it is overcome by proof beyond a reasonable doubt to the contrary. An example of that is, of course, the presumption of innocence.

Now, what is evidence in the case? Evidence

is the testimony of the witnesses, regardless of who called the witness, all the testimony they gave, both on direct, cross, redirect and recross. The exhibits which were marked in evidence, that includes all the exhibits including the tapes and the transcripts of the tapes, facts which have been admitted or stipulated to between the lawyers, and facts of which the Court has taken judicial notice.

It might be helpful for you to understand what is not evidence in the case. The opening and closing remarks or summations made by counsel is not evidence. They perform important functions. The opening is to alert the jurors as to what is to come so that they more easily will understand the evidence as it is offered. The summations to offer to you the jury, theories advanced by both sides.

The defendants advance theories of exculpability. In effect, they said the defendants are not guilty because the Government has failed to prove their guilt beyond a reasonable doubt.

The Government offers theories of inculpability. Mr. Puccio argued to you that the Government has proved the guilt of the defendants, as to both counts, by proof beyond a reasonable doubt. It also focuses

on what the lawyers believe the important issues in the case are, so that the jury is led to those issues --

Statements made by the Court -- if I did, I don't recall -- is not evidence.

Incidentally, while I think of it, do not place any special importance on any questions that I may have asked. I recall asking two or three or maybe half a dozen questions.

The only reason I asked the questions was because during the testimony, it probably occurred to me that some of the testimony was unclear and if it was unclear to me, it may very well have been unclear to you, so I thought a question may have cleared it up. It may have further confused you, but that was the aim and the purpose, and nothing else.

Pay no attention to evidence that is stricken from the record. It is only what remains in the record that you consider. If I said to the reporter, "Strike it from the record," just as he physically strikes it from the record, so you must strike it from your minds, figuratively.

At times a lawyer incorporates in a question an assumed fact, and it is perfectly proper. You

see, on cross examination the credibility of the witness is tested. That is part of the adversary system.

And as part of the adversary system, in cross examination, to test credibility, he assumes a fact. If the witness has rejected it -- said, "No, it never happened," you cannot assume the truth of that fact. If there is nothing in the record to support it, just disregard it.

On the times that objections were sustained to questions, you may not speculate as to what the answers might have been had the witness been permitted to answer.

Again, no testimony on that particular subject, or at least no answer to the question was given, so it was not in the record, and you may not consider it, because it was not in the record.

You, the jurors, are the sole judges of the credibility of the witnesses, which means the believability of their testimony and the weight their testimony deserves.

Scrutinize the testimony given and the circumstances under which each witness testified in every matter in evidence, which tends to show

whether a witness is worthy of belief. Consider each witness' intelligence, consider each witness' motive and state of mind -- motive means why a witness is testifying. His state of mind, what he is thinking of, his hopes, his expectations -- and the demeanor and the manner in which the witness answered questions while on the witness stand.

In other words, his behavior on the witness stand. Did he answer the questions directly? Did he answer them fully? Was he evasive? Take into consideration the witness' own ability to observe the matters as to which he has testified, whether the witness shall have impressed you as having an accurate recollection of those matters.

Take into consideration the relation that each witness might bear to either side of the case.

Take into consideration the manner in which each witness might be affected by the verdict, the extent to which -- if at all -- each witness is either supported or corroborated or contradicted by other testimony in the case, or by his own.

If a witness is shown to have knowingly testified falsely under oath before you, you may reject all that witness' testimony on the ground that

witness is not worthy of belief.

On the other hand, you may decide that there is something to what he said and accept that testimony that you find worthy of belief, rejecting only that portion that you recognize as false.

That principle underscores the discretion that the jury has in weighing credibility. It is not precise tools that you have, but they are good reliable tools, experience, your good common sense, what has happened with you and how you dealt with problems yourself in the past equips you admirably for the task of searching out the truth.

These are the guidelines that I offer you. There are others.

The law does not compel a defendant in a criminal case to take the witness stand and testify. No presumption of guilt may be raised and no unfavorable inferences of any kind may be drawn by the failure of the defendant to testify.

The defendant may rely on the failure of the Government to prove its case beyond a reasonable doubt. It would be improper for you to discuss the failure of the defendant to take the stand at any time during your deliberations.

In weighing the testimony of the Government witnesses, you can consider their relationship to the Government and any bias or interest in the outcome of the case they may have.

Interest creates a motive for false testimony. The greater the interest, the stronger the motive for false testimony.

In appraising credibility, you may take that fact under consideration. However, it by no means follows that simply because a person has a vital interest in the end result, he is not capable of telling a candid story. It is for you to decide to what extent, if at all, any interest the witness has in the outcome of the case, affects or colors his testimony.

The testimony of a witness who provides evidence against a defendant for pay or for immunity from punishment or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of ordinary witnesses.

The jury must determine whether the informer's testimony has been affected by interest or by prejudice against the defendant.

Mr. Catania appeared before you and said he participated in the alleged crime.

The participant is one who unites with another in the commission of a crime voluntarily and with common intent. He is an alleged accomplice.

An alleged accomplice does not become incompetent as a witness because of participation in the crime charged.

On the contrary, the testimony of an alleged accomplice alone, if believed by the jury to be true by proof beyond a reasonable doubt, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence.

(continued next page.)

THE COURT: (continuing) You decide whether there is any evidence to support Mr. Catania. I am pointing out to you only that a verdict of guilty may stand on an alleged accomplice's testimony alone if you believe that alleged accomplice's testimony to be true beyond a reasonable doubt.

However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict a defendant on the unsupported testimony of an alleged accomplice, unless you believe that testimony to be true beyond a reasonable doubt.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony. That is, a crime punishable by imprisonment for a term of years. A prior conviction does not render a witness incompetent to testify, but it is merely a circumstance which you may consider in determining the credibility of the witness. That is the province of the jury to determine how much the conviction of a felon affects the credibility of his testimony.

Now, evidence that at some other time prior to the time the witness took the witness stand,

the witness said or did something which is inconsistent with the witness' testimony given before you at the trial, may be considered by the jury as impeaching testimony in determining and judging the credibility of the witness.

You may also consider the failure of the witness to disclose information on prior occasions, when the opportunity to do so presented itself as inconsistent with that witness' testimony at the trial. Whether the prior statement is inconsistent with the testimony given at the trial is a matter solely for the jury to determine.

In determining the affect it has on the witness' credibility, take into consideration all the circumstances under which the witness gave the prior testimony or statement.

You determine if it is inconsistent, whether it is inconsistent as to a material or immaterial matter.

And having determined that, you determine what effect it has on that witness' credibility.

Now, the jury recognizes that in retelling a story, giving a version of an incident, there are certain variations that are normal. If a witness

appeared before you and it was shown that the witness gave the same version in exactly the same language, using exactly the same gestures and pauses, you would suspect it as rehearsed.

So at times, normal variations might lend credibility to the witness' testimony. But you determine again, whether the testimony previously given, or the statement previously made, are inconsistent with the present testimony, whether they are inconsistent as to a material matter or as to an immaterial matter, and the effect it has on that witness' credibility.

I have in my hand the indictment. The statements in the indictment do not prove the charge. As was explained to you, it is the manner in which a defendant is brought into court. And the defendants, both of them, have said, "Not guilty," to both charges. It is just a piece of paper. I read it to you so you may know what the charges are, to see whether the Government has proved its case.

Count One is what we call the conspiracy charge. And Count Two, as I said, is the substantive charge.

I will first read the statute on which these

charges are based. Almost all of our federal law is codified. It is called the United States Code, as a matter of fact, and they are in books like this. And when the Congress passed this statute, it's known or designated as 21 United States Code Section 173--21 is the title, and it is Food and Drugs. Section 173 is the section which I am reading. I will just read a portion of it.

The section is designed to prohibit the importation of narcotic drugs, except in certain limited quantities under specified restrictions for medical use and research.

But the portion that is pertinent to this case is as follows:

"It is unlawful to import or bring any narcotic drug into the United States or any territory under its control or jurisdiction, except that such amounts of coca leaves as the Commissioner of Narcotics finds it necessary to provide for medical and legitimate uses only, may be imported and brought into the United States" and so forth.

Now, I charge you that cocaine and cocaine hydrochloride is a narcotic drug. The section which makes the importation and the transportation and the

concealment and the possession of cocaine a crime is 174. It states as follows:

"Whoever fradulently or knowingly imports or brings any narcotic drug into the United States contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law", violates the section.

Those are the substantive offenses.

That is, the importation, the possession, the concealment, the transportation. And then here is the conspiracy phrase. And that's all it is.

"Or conspires to commit any of such acts in violation of the laws of the United States," commits the crime.

Some of the phrases you heard, you will hear again when I read the indictment because the indictment is based, as it must be on the statute. Because again, Congress decides what you may not do and what is a crime.

Count One:

On or about and between the first day of

December, 1970 and the 30th day of April, 1971, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, Frank Cotroni, Frank Dasti, Guido Orsini, Paul Oddo, Jorge Asaf Y Bala and Claudio Martinez, the defendants, together with Guiseppe Catania, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to violate sections 173 and 174 of Title 21, United States Code.

1. It was part of said conspiracy that the defendants and co-conspirators fraudulently and knowingly would import and bring into the United States a quantity of cocaine, a narcotic drug, contrary to law.

2. It was further a part of said conspiracy that the defendants and co-conspirators wilfully, knowingly, and unlawfully would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of cocaine, a narcotic drug, after the narcotic drug had been imported and brought into the United States, knowing

the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent the exposure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Eastern District of New York and elsewhere:

Overt acts:

1. On or about the 8th day of January, 1971, co-conspirator Catania met with defendants Cotroni and Dasti at the Pescatore REstaurant in Montreal, Canada.

2. On or about the 10th day of January, 1971, co-conspirator Catania and defendant Martinez travelled by airplane from Dallas, Texas, to John F. Kennedy International Airport, Queens, New York.

3. On or about the 10th day of January, 1971, co-conspirator Catania delivered approximately 9 kilograms of cocaine to defendant Oddo at the Hotel Riverside Plaza in New York, New York.

4. On or about the 12th day of January, 1971,

co-conspirator Catania delivered approximately 43,000 dollars to defendant Asaf Y Bala in Mexico City, Mexico.

5. On or about the 22nd day of January, 1971, defendant Dasti delivered a package to defendant Orsini at Berk's Drug Store in Montreal, Canada.

Count two:

On or about the 10th day of January, 1971, within the Eastern District of New York, Frank Cotroni, Frank Dasti, Guido Orsini, Paul Oddo, Jorge Asaf Y Bala and Claudio Martinez, the defendants, willfully, knowingly and unlawfully did receive, conceal and facilitate the transportation and concealment of approximately 9 kilograms of cocaine, a narcotic drug, after the narcotic drug had been imported and brought into the United States, knowing the same to have been imported and brought into the United STates contrary to law.

There is evidence in this case before you, which consists of conversations under the interpretation of the Government and denied by the defendants. For example, there is testimony that Orsini, in Italy, bought heroin, or at least the Government argues that the code name for heroin was wine. The defendants

deny that. The conspiracy charge and the substantive charge revolve around 9 kilograms of cocaine shipped from Mexico to New York and distributed there in certain ways according to the position of Government.

The defendants, of course, deny all this.

I want you to understand that the Government must prove the existence of the conspiracy -- and I will tell you all the other elements later on -- in dealing with the 9 kilograms of cocaine. And the testimony, if you believe the Government's version of the testimony, showing that the conspiracy or the conspirators or some of them talked about and/or dealt in heroin, is only on the issue as to whether the accused entered into this conspiracy for the cocaine as charged in the indictment knowingly and wilfully. And it's introduced and may be used by you only for that limited purpose.

And if you don't think it's pertinent to that issue, disregard that evidence.

What is a conspiracy? A conspiracy is a combination of two or more persons who, by concerted action, organize to accomplish an unlawful purpose.

So a conspiracy is a kind of partnership in

criminal purposes in which each member becomes the agent of every other member of the conspiracy. The members of the conspiracy are called conspirators. The gist of the offense is a combination or agreement to disobey the law. It's a getting together of two or more people to accomplish a criminal act. In this case, to deal in cocaine.

The mere similarity of conduct among various members, and the fact that they may have been associated with each other and may have assembled together and discussed common aims and interests, does not necessarily establish the existence of a conspiracy. People have a right to assemble. They have a right to pursue legitimate business.

However, the evidence in the case need not show that the members entered into any express or formal agreement or that they directly, by word spoken or in writing, stated between themselves, what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy exists, is that the members, in some way

or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish an unlawful plan.

The evidence in the case need not show that all the means alleged were used, nor that all the persons charged with being members of the conspiracy were, in fact, members of the conspiracy.

(continued next page.)

THE COURT: (continuing)

What the evidence in the case must establish, beyond a reasonable doubt is that the alleged conspiracy was knowingly formed. In other words, that those who entered into the deal were aware that they were going into a business dealing with cocaine. They knew it was unlawful to import cocaine. They knew it was unlawful to deal in cocaine. They were aware of all that and nevertheless, entered into a conspiracy.

The evidence must further show that thereafter, one of the conspirators, knowingly committed an overt act in pursuance of the business of the conspiracy as charged in the indictment.

Now, one may become a member of a conspiracy without full knowledge of all the details of the conspiracy.

On the other hand, a person who has no knowledge of the conspiracy, but happens to act in a way which furthers the purpose of the conspiracy, does not thereby become a conspirator. Before the jury may find either of the accused a member of the conspiracy, the evidence must show beyond a reasonable doubt that they participated knowingly and wilfully in the

business, in the conspiratorial plan, with a view to advancing the purpose of the conspiracy.

In order that the Government establish that the accused knowingly and wilfully became a member of the conspiracy, it must be based on evidence, testimony of witnesses or exhibits which include the tapes, based on what the accused said or did, not what some other person alleged to be a member of the conspiracy said that the accused said or did.

The Government in this case, takes the position that this is a chain conspiracy. We think of a conspiracy as a partnership and everyone equal partners. But even in the legitimate partnership is not always so. We have a device called the limited partnership, where certain people who are in management and others who are just partners -- they are investors. And so the analogy betwen a partnership and a conspiracy is not exact. It is not precise.

But the theory of this conspiracy -- and I am not intending in any way to indicate by discussing the chain conspiracy and the Government's position, to indicate to you that I support this or I believe that there is evidence to support it or

anything else. I am just showing the position of the Government so that you may determine whether the Government has proved its case by proof beyond a reasonable doubt.

The Government charges that in this chain conspiracy, as in all chain conspiracies, the different members of the conspiracy had different roles. Their duties within the conspiracy were at various levels.

It is not necessary for the Government to show that all the members of the conspiracy knew each other. As a matter of fact, the Government doesn't have to prove that any member of the conspiracy knew any other members of the conspiracy, but the Government must show that each member of the conspiracy knew and understood that the success of the conspiracy depended on others that had different roles in the conspiracy.

The Government's position, as I understand it -- and, incidentally, denied by the defendants -- they deny knowledge of anything -- within the conspiracy, that is -- and I give you this just in rough form. I am giving a classification so you understand what the chain looks like, as I view the evidence in the way I interpret the Government's position, that here Guiseppe Catania and Jorge Asaf Bala were the

exporters; that Claudio Martinez was the courier; that the defendant Frank Cotroni was the importer; the defendant Frank Dasti was in the employ of Cotroni.-- or whatever classification the Government views it.

In one instance, I think [illegible]. Mr. Puccio said customer's man or manager in the employ of Mr. Cotroni.

Mr. Horvath answered the telephone at the Victoria Sporting Club. Mr. Paul Oddo was a distributor; that Mr. Anthony Vanacore and Vincent Altamura were wholesalers, purchasing from Mr. Oddo; that Mr. Joseph Cordovano and Mr. Bynum were the retailers; and Mr. Orsini had a role in delivering money to Mr. Cotroni and/or to Mr. Catania in Mexico.

Now, don't accept my version for what I recall the evidence to be. You use your own good judgment. My recollection isn't any better than yours. And I venture to say, at least half of you have a better memory than I have.

But generally, that is the theory of the Government.

Again, the defendants deny any conspiracy

and certainly deny any role in the conspiracy.

Thus far, in defining conspiracy, I talked about criminal liability.

During the trial I charged you on any number of occasions, on how to use testimony given by Mr. Catania, and, as I remember, Mr. Stewart, where neither Mr. Cotroni nor Mr. Dasti were present.

What I just charged you on again is a question of criminal liability. The other is a matter of dealing with the evidence.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter, knowingly made, and the acts thereafter, knowingly done by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant, found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy and in furtherance of some object or purpose of the conspiracy.

Otherwise, any statement made or act done by one

member may not be considered as evidence against any person who is not present and did not participate in the conversation.

If it appears beyond a reasonable doubt by the evidence in the case that the conspiracy alleged in the indictment was knowingly and wilfully formed and that the accused, knowingly and wilfully became a member of the conspiracy, and that thereafter, one or more of the conspirators knowingly committed an overt act in furtherance of some object or purpose of the conspiracy, then the failure of the conspiracy to accomplish the common object or purpose is immaterial.

In other words, when we talk about conspiracy, the success or failure, the delivery, the possession of nine kilograms is not material to this count. This count is based on the unlawful agreement, the getting together knowingly and wilfully, the knowing and wilful entrance of the accused into the conspiracy, and thereafter, the commission of an act by a conspirator knowingly and wilfully in furtherance of the objects of the conspiracy.

An overt act is any act that is visible. The overt act, in and of itself need not be criminal.

But it must be knowingly done, performed by the conspirator, meaning that the conspirator performs the act, must be aware that he is performing the act and he must be aware that he's performing it for the business of the conspiracy, and must further be shown that the overt act furthered the object or purpose of the conspiracy.

The mere presence or mere knowledge that a crime is being committed is not sufficient. The Government must prove that the accused, knowingly and wilfully entered into the conspiracy, participated and did something knowing that what was being done was in the cocaine business and knowing that what was being done was to further the object and purpose of the business, and knowing that what was being done was in violation of law.

The Government doesn't have to prove that the defendant knew that the specific section that was being violated -- just that the defendant knew that it was unlawful to do what he was doing.

The Government must prove the following three essential elements of the crime charged by proof beyond a reasonable doubt.

I will number them so you can keep them in

1. That the conspiracy described in the indictment was knowingly and wilfully formed and was existing at or about the time alleged.

(continued next page.)

Second, that the accused knowingly and wilfully became a member of the conspiracy. That means that he entered the conspiracy with his eyes wide open, knowing exactly what he was doing, knowing that he was entering into the cocaine business, and knowing that it was unlawful to import cocaine, to conceal cocaine, to transport cocaine.

Proof of wilfulness requires the Government to prove that the accused became a member of the conspiracy, knowing that the conspiracy was formed for the purpose of dealing in cocaine that was imported into the United States contrary to law, and that the accused entered into the conspiracy knowing that the importation of cocaine was illegal.

Three, that one of the conspirators thereafter knowingly committed an overt act in pursuance of the objects and purposes of the conspiracy, and in furtherance of the object or purpose of the conspiracy.

Now, we come to the second charge of the indictment, the substantive count. This count does not charge the entering into an agreement between two or more persons. This count says that on or about January 10, 1971, the defendants Frank Cotroni and Frank Dasti, with others, wilfully, knowingly, and unlawfully received, concealed,

and facilitated the transportation and concealment of approximately nine kilograms of cocaine after the narcotic drug had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

There is nothing in the record to show that Frank Cotroni imported, received, concealed or transported these nine kilograms. The record is to the contrary. He was not in New York at all during the entire transaction in New York. The commission of the substantive offense. The Government must prove the following three essential elements of the crime charged in the second count.

First, that on or about January 10, 1971, the accused received, concealed, facilitated the transportation and concealment of approximately nine (9) kilograms of cocaine imported or brought into the United States contrary to law

Second, doing such acts, knowing that the cocaine had been imported or brought into the United States contrary to law as charged, and

Third, doing such acts knowingly and wilfully.

Again, doing such acts knowingly means doing it with full knowledge of what was happening, being aware of what was happening, not by mistake or negligence, or any other innocent reason.

Performing such acts wilfully means performing it voluntarily, intentionally, knowing that it was a violation of law to do it.

So the Government must prove beyond a reasonable doubt:

First, that the cocaine was illegally imported to the United States, and

Secondly, that the defendant knew that it was illegally imported into the United States.

There is no proof that the defendant Dasti had physical possession of any of the cocaine. Again the proof is to the contrary. The Government charges that both defendants wereaiding and abetting the receipt, concealment, transportation of the cocaine. This is based on our aiding and abetting statute, which says the following:

Section 2 of Title18, and this is another Title. It says as follows:

"Whoever commits an offense against the United States, or aids, abets, and counsels, commands, induces or procures its commission is punishable as a principal.

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

In other words, every person who willfully participates in the commission of the crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with specific intention to do that which the law forbids.

In order to aid or abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something that he wishes to bring about, that is to say, that he willfully seeks by some act or omission of his to make the criminal venture succeed.

Of course, you may not find either defendant guilty of aiding and abetting, the offense charged in Count Two, unless you find that the crime was completed.

There is another theory of criminal liability, and that arises from membership in the Conspiracy. If after you have considered all the evidence in the case, if you find by proof beyond a reasonable doubt that the offense charged in Count Two of the indictment was committed, and you further find from the evidence that the Government established the existence of the Conspiracy alleged in the Indictment, and at the time of the commission of the offense in Count Two, -- that is, the sub-

stantive Count -- the accused was a member, or the accused in the plural were members of the Conspiracy, and further, that the crime was committed in furtherance of the object of the unlawful Conspiracy, to wit, to deal in cocaine, then the accused that you find to be such a member is guilty of the crime charged in Count Two by reason of his participation in the Conspiracy.

In other words, the Government need not prove that the accused was present at the time or place the criminal act was committed. If the Government proves beyond a reasonable doubt:

One, the Conspiracy charged in Count One.

Two, that a member of the Conspiracy committed the offense charged in Count Two.

Three, that the offense committed in Count Two was committed during the time of the Conspiracy, and in furtherance of the objects of the Conspiracy, and

Four, that the accused was a member of the Conspiracy at the time the offense was committed -- If the Government proves all of that beyond a reasonable doubt, you may find the defendant guilty of the crime charged in Count Two, even though he was not present at the time, even though he may not have participated in the criminal act.

You will shortly be excused to consider the case before you. The verdict must represent the considered judgment of each juror. Each juror is obligated to consider the evidence and arrive at a determination through his or her own mental processes. It would be a violation of your obligation if you came into the jury room and in effect said:

"Well, you know they call me Good-Time-Charlie or Good-Time-Gertie, and I don't argue with anybody, so I will go along with the majority, or whenever you have eleven either way, I will vote with the eleven.

That's wrong.

On the other hand, it is equally a violation of your obligation as jurors to take an intransigent position, to say to the other jurors:

"Now look, this is the way I feel about the case, and when the rest of you come around to my way of thinking, let me know. In the meantime, don't bother me."

The jury process is a deliberative process. It is a discussion of the evidence. It is an exchange of ideas. If you have arrived at a determination as to the guilt or innocence of either defendant on the Counts charged, and after discussing the evidence with your fellow jurors, you are convinced that you were wrong,

then you should not hesitate to give up the determination that you find is no longer valid.

Now, the Court does not say that you should give up any determination that you firmly believe is based on the record in the case. It is not that. It is just that you have an obligation to continuously and continually discuss the evidence with your fellow jurors.

During your deliberations, you will have occasion to communicate with the Court. You will do that all through your Foreman. I am not interested in knowing how you stand at any time during your deliberations, whether it is six to six, eight to four, ten to two, or eleven to one. Do not tell me that. When all have agreed on a verdict, then I want to know that you have agreed. Do not tell me what the verdict is. All I want you to do is put on a note, "We have arrived at a verdict." When that is done, I will call you all in to the open courtroom, I will ask the Foreman to stand, and I will say the following in effect:

"Mr. Foreman, I have your note. You have arrived at a verdict in United States against Frank Cotroni and Frank Dasti. How do you find as to defendant Frank Cotroni as to Count One?" And you will give me the answer.

"How do you find as to defendant Frank Cotroni as

to Count Two?

"How do you find as to defendant Frank Dasti as to Count One?

"How do you find as to defendant Frank Dasti as to Count Two?"

Then, "Will the Foreman sit down," and I will turn to Juror No. 2:

"You have heard the verdict as rendered by the Foreman. Is that your verdict?" And you will answer. Then I will turn to Jurors 3, 4, 5 to Juror No. 12. When all the Jurors agree in open court that that is the verdict, then it becomes the verdict of this case, not before.

During your deliberations, you may have occasion to ask for Exhibits. If you want all the Exhibits, I shall send all the Exhibits in, with the exception of the tapes. If you want to hear the tapes, they will be heard in open court. We have the equipment here.

You may want to hear some of the testimony. Now, we have testimony taken over a period of two weeks, or nine trial days, and it would be helpful if you specified the subject matter and the name of the witness, and if you wanted all the testimony, or just the direct, or just the cross, or the redirect or recross, if you could

do it. It is not always easy to do it. It would be helpful if you are specific in what you want.

Now, I think that is about all I have.

Do I understand that the lunch has arrived? Usually when I get a phone call, the lunch has arrived. I am willing to have you go into your jury room and have your lunch, but do not talk about the case. You are not at liberty to do it yet, and I will ask the lawyers to have their lunch. And if they can get back by 1:30? Again, I know I am curbing their lunch. I will ask them to do it just this one more time, and I will probably be ready for you at 1:30, and then I will give you whatever other instructions that I want to give you.

Do not discuss the case, just have your lunch and nothing else.

The jury is excused for lunch.

(Jury leaves courtroom.)

THE COURT: Mr. Puccio?

MR. PUCCIO: No exceptions.

THE COURT: Mr. Iannuzzi?

MR. IANNUZZI: Exceptions, sir?

THE COURT: Yes.

MR. IANNUZZI: Yes.

I take exception to your Honor's Charge with reference to the testimony of heroin, particularly with reference to Stewart, for the purpose of determining whether or not persons knowingly entered a Conspiracy concerning the heroin.

I would except to that, and I suggest it is prejudicial and unnecessary.

That's the only exception that I would have.

THE COURT: Mr. Klar?

MR. KLAR: I am going to take exception to your Honor's statement referring to Count Two, when you used the word "heroin."

THE COURT: Did I?

MR. PUCCIO: You did, but it was obviously meant to be cocaine.

In the next line, when you were reading from the statute, you said "cocaine."

In other words, this was in the Conspiracy Count, you were reading from 174, and you said "heroin" instead of "cocaine."

(continued on next page.)

THE COURT: I will call them right in now.

MR. KLAR: I think perhaps taken in context with the reference --

THE COURT: If that is the only exception, let me bring them in.

MR. PUCCIO: Could we have them go into their deliberations?

MR. IANNUZZI: I would also have some requests with reference to your Honor's charge. I would request that your Honor charge in number 5, to wit, the mere knowledge of the existence of the conspiracy or a person involved in a conspiracy is not sufficient --

THE COURT: I charged that.

You say that I did not charge it?

MR. PUCCIO: It was charged.

THE COURT: Of course I charged it.

MR. IANNUZZI: I ask that it be charged further towards the end --

THE COURT: Overruled.

MR. IANNUZZI: May I have an exception?

THE COURT: Yes, seat the jury. We can complete this thing now. I do not know why I thought it would go on for 15 or 20 minutes, but I did.

(Jury present.)

THE COURT: I misjudged the lawyers. I thought that I would have to spend a lot of time with them. It has been so brief, that I can complete everything now, and you can start your deliberations after I have completed.

I understand that I inadvertently talked about heroin in the second count --

THE FOREMAN: What?

THE COURT: I said heroin in reference to the second count, and of course you must recognize that it is all wrong. The second count has nothing to do with heroin. It is cocaine that is charged. It is the knowing, unlawful and wilful receipt, concealment facilitation and transportation of approximately 9 kilograms of cocaine. If I did say heroin, it was just an error or a slip of the tongue.

At this time I will excuse alternates 1 and 2. You may not deliberate with the jurors, that is why I asked no deliberations, until this point, so will you please take your lunch --

THE CLERK: It is in the jury room.

THE COURT: Can you identify your lunch? Would you take your lunch out now from the jury room and have it possibly in the central jury room?

You are excused with the thanks of the Court. Take your personal effects out if you have a coat and anything else.

Will the Clerk please swear in the marshals?

(Marshals sworn.)

THE COURT: Now, the chances are that I won't be able to pay any attention to any note that you send me from here on until about 2:30. Do not think that I have forgotten about you, that I am not interested. I am going to give the lawyers an opportunity to have their lunch and it is difficult getting into restaurants. I will not ask them to be back till 2:30. I cannot take any matters up with you until I take it up with the lawyers and I cannot do it with them unless it is in open court. You can write any note that you think you would like answered, but I will hold it and if you do not hear from me until 2:30, you know the reason why.

The jury is excused for lunch, and you can deliberate on the matter immediately if you want to. I just call your attention to the oath that you took as jurors, an oath to render a true and just verdict. That is an oath based on the evidence, free of all prejudice, bias and sympathy and I have every confidence that you will do just

that.

The jury is excused for deliberations on the matter before it.

(Jury leaves courtroom.)

THE COURT 2:30, gentlemen.

(Luncheon recess taken.)

THE CLERK: Case on trial, United States of America versus Frank Cotroni and Frank Dasti.

THE COURT: I have two notes, first they want Agent Gill's testimony, all cross examination. That means they want the entire testimony, maybe they want only the cross examination; and they want the Ramada Hotel receipt and hotel registration.

Suppose you get that out for me. See if you can give me the page of Agent Gill's testimony.

MR. IANNUZZI: In the event there has to be testimony read, perhaps we should check it over because there were so many typographical errors.

THE COURT: You are not going to read it, I'm going to read it. What page is Agent Gill's testimony?

MR. PUCCIO: 836.

THE COURT: What is the Ramada --

MR. PUCCIO: 42 in evidence.

THE COURT: Show it to counsel.

THE CLERK: Two jury notes marked Court exhibit 2 and 3.

Turning exhibit 42 over to the marshal for delivery over to the foreman of the jury.

I've another note. The names of the three men who met in the Pescatore Restaurant in Montreal.

Who saw them there?

MR. PUCCIO: Sauve and Catania testified to that also.

THE CLERK: That note marked Court exhibit 4.

THE COURT: What page is Sauve's testimony? What page is that on?

MR. PUCCIO: Sauve starts on 807 and runs until --

THE COURT: Just the identification of the men. It says the names of the three men who met in the Pescatore Restaurant.

Sometimes they ask me questions. I explain to them I can't answer questions. If this is the testimony you want, I'll read those lines.

MR. IANNUZZI:809, line 5, Judge.

THE COURT: All right.

MR. IANNUZZI: It isn't a question of misleading. There is mistyping of names and identification and everything else.

THE COURT: If I don't recognize it, you can raise your hand.

Seat the jury.

I have a fourth note from the jury. They want exhibit 39 -- the book.

I'll deliver 12 copies of 39 to the jury,

the same copies that they used.

MR. PUCCIO: These are the same copies they used.

(Whereupon jurors entered courtroom, are now seated in the jury box.)

THE COURT: Now, your note reads Agent Gill's testimony, or cross examination. Did you want only the cross examination or did you want all the testimony?

The first questioning is called the direct and then the cross examination.

Now, this transcript has not been checked. After it's checked with the notes, the reporter stamps a certification and says I certify that this is a true and accurate transcript of the testimony. He compares it with those notes, the spaghetti looking thing that you see.

There may be mistakes. The lawyer alerted me to the fact that they recognized mistakes, so I'll ask the lawyers to raise their hands before I read it. If I don't recognize it's an error, then I'll ask them what the correction is, and they have agreed on it.

All lawyers have agreed that there are some errors.

Direct examination by Mr. Puccio beginning at page 836 line 16.

(Whereupon the Court commenced reading transcript as indicated.)

THE COURT: When all 12 says enough, I'll stop reading.

(Court continuing to read transcript as indicated above.)

THE COURT: Then I direct Mr. Puccio to continue with Mr. Gill. So I suspended at line 19 on page 840 and I continue on line 15, page 841.

I suspend at line 17 on page 844 and I go to line 4, on page 845.

I suspend at line 21 page 846.

I suspend on line 12 and I go to line 17.

I suspend at line 9 and I go to line 12 and the Court directed the witness just to answer questions.

I suspend at line 15 on page 853 and I go to line 4 on page 864 -- where I said I suspended, I'm not reading anything on 864. The jury was excused, and then I continue on line 11 on page 965 -- that's a mistake in numbering. You have the pages 965. The previous page is 864, so I imagine that means 865.

Line 11, 865.

I suspend at line 22 on page 865.

MR. PUCCIO: Actually that portion you just read was outside the presence of the jury.

THE COURT: That was out of the presence of the jury. Disregard that last question and answer. I don't want to read anything that happened outside your presence, for the very same reason that I excuse you.

I'll continue on line 20, page 867. I suspend at 868 and go to line 16.

MR. IANNUZZI: I believe you left out a question.

THE COURT: It's no answer.

I suspended at line 8 on page 868 and I go to line 25 on page 870.

I suspend at line 11 on page 871 and go to line 2 on page 872.

MR. IANNUZZI: There is an answer that you left out on line 13.

THE COURT: I'll go back to line 5 on 871.

I suspend at line 7 and go to line 13.

I suspend at line 5 and I go to line 11.

MR. IANNUZZI: In reading this, the answer on page 871, line 13, I think was in response to

your Honor's question in refreshing your Honor's Honor's recollection as to the report. It's not in answer to the question.

THE COURT: I'll go back to line 5 page 871. -- I was correct when I skipped all that.

MR. IANNUZZI: I didn't do that to mislead you.

THE COURT: That completes the cross examination by Mr. Iannuzzi. I suspend at line 14 page 875; continuing at line 15, page 876, Mr. Iannuzzi addressing the jury.

Line 4, page 880 I'll suspend.

I'll suspend because you say that's all you want. You asked a question and you must understand that I can't answer questions. The names of the three men who met in the Pescatore Restaurant in Montreal. On page 809 in the direct examination of Mr. Sauve, line 4, question by Mr. Puccio.

(Whereupon, Court read question and answer.)

The jury is excused for further deliberation on the matter.

(Whereupon the Court stood in recess.)

(After recess:)

THE COURT: This note which I just received asked for Agent Gill's report of the observations

of Dasti, that was introduced into evidence; is that right? What was the number?

MR. PUCCIO: M.

THE COURT: I understand there is another knock on the door so another note will be coming out.

THE CLERK: That note marked Court exhibit 6.

THE COURT: May we have it to turn over to the marshal, if that is the report? Day of Gill's report.

The marshal was trying to tell him something. Did you say anything?

THE MARSHAL: No.

THE COURT: Date of Gill's report.

THE CLERK: That note marked Government's exhibit 7.

MR. PUCCIO: When we offered this in, we were going to take out the top part.

THE COURT: Take the top page, mast it and Xerox it.

MR. IANNUZZI: Xerox the whole thing.

THE COURT: Just the first page.

MR. PUCCIO: We'll have to leave the part --

THE COURT: Leave the date of the report in. It's the same exhibit. The record shows we are

substituting the Xeroxed page excising the portion that was referred to in the record and the exhibit is now marked as the exhibit.

MR. PUCCIO: I've retained the original page.

THE COURT: I'll be in Judge Platt's chambers.

(Whereupon court stood in recess.)

(continued next page.)

(The following took place in the absence of the jury:)

THE COURT: We have a note marked exhibit 8.

What time did Catania meet Dasti at the Waldorf Astoria Hotel on January 11th?

All right, I will do the best I can.

MR. IANNUZZI: Let's see if we can have a few more moments to check the cross examination, Judge.

THE COURT: Yes.

THE CLERK: Jury note so marked Court exhibit 8.

THE COURT: Well, I can read part of the answer on 84 which says, "We took another car and we returned to the Taft Hotel to pick up all our luggage which was already deposited down in the hotel.

"And from there we went to the Waldorf Astoria where I, in turn -- I controlled the money."

And then exhibit 30 is the exhibit. That's the Waldorf registration card, right?

And I'll read that part where it says, exhibit 30, and turn that over.

MR. PUCCIO: That doesn't include the time, your Honor.

THE COURT: Where is the time? That's what I

mean, Isn't that exhibit 30?

MR. PUCCIO: Yes. But I didn't read the time when I read the exhibit. I refer to the time in my summation, but in the record here, I just said, it indicates he checked in on January 11th and checked out on January 12th. But in the summation I indicated the time, which is 103.

THE COURT: That's what I mean. I will give them the exhibit.

May I have the exhibit?

Is there any objection to that? That will fix the time he checked into the Waldorf Astoria.

MR. IANNUZZI: Yes, that is true.

THE COURT: I will read this portion of the testimony where exhibit 30 is marked for identification. Then I will say, well, the exhibit was subsequently marked in evidence and you can have that. I will first explain to them that I can't answer the question in the form they have given it to me.

MR. IANNUZZI: May I have another moment to look?

THE COURT: Sure, go ahead.

MR. IANNUZZI: Perhaps there may have been something in the cross examination.

THE COURT: I can read 88 where it says, "later the same day --" line 6.

MR. IANNUZZI: There is also a reference at 494. It is not any more explicit.

MR. PUCCIO: It doesn't fix the time.

MR. IANNUZZI: No, it is the same thing.

THE COURT: Well, I will read it. If I read one, there is no harm in reading the other.

494?

MR. IANNUZZI: Yes

THE COURT: All right, bring them in. I will tell them the difficulty we have. I will just tell them I can't answer their question.

494, what line?

MR. IANNUZZI: It's actually, sir --

THE COURT: Well, this is the hearing. 494 line --

MR. IANNUZZI: Well, it's about 5 or 6.

MR. KLAR: It doesn't fix the time.

MR. PUCCIO: It doesn't fix the time.

THE COURT: That's just the place.

Where did that meeting take place?

MR. IANNUZZI: It just says, later on that day. That's about all it says.

THE COURT: All right, bring them in. If

you find something in the meantime, I will read it to them.

Bring them in.

(Whereupon, the jury entered the courtroom at 5:25 P.M.)

THE COURT: As I advised you, I cannot answer questions. So when you asked me, what time did Catania meet Dasti at the Waldorf Astoria on January 11th, I can do no more than look through the testimony with the aid of the lawyers to try to find the answer to the question. We are not always successful. This is the closest we have come, beginning -- I am only going to give you part of the answer. This is the testimony by Mr. Catania, the direct examination by Mr. Puccio. And I will give you part of the answer because I want to give you only what you asked for and I am trying to give you no more. If you want more, then ask for it and then you will have it.

You are only asking for the time. Line 13, page 84, partial answer by Mr. Catania.

(Record read.)

THE COURT: Now, you can read exhibit 30, which is in evidence. And I will turn it over to the marshal to give to you.

And then beginning at page 87, line 21, direct by Mr. Puccio.

(Record read.)

THE COURT: Now, I will skip -- I suspended at line 8 and I go to page 88 and go to line 18 on page 88.

(Record read.)

THE COURT: I am directing the marshal to turn exhibit 30 over to the foreman.

THE MARSHAL: Yes, your Honor.

THE COURT: The jury is excused to deliberate on the matter.

One more thing: it is now 5:30. If you intend to stay, let's say, beyond 8 o'clock, we must put in an order for sandwiches again. That's all we can serve here.

I would appreciate your telling me if you can estimate it, and we will send some menus in and we will try to get the order, the food to you, because it usually takes about an hour or an hour and a half to get it here.

The jury is excused.

(Whereupon, the jury retired from the courtroom.)

THE COURT: Incidentally, gentlemen, I find

it difficult to read the time on that bill. Now, I didn't want to read the wrong time.

MR. PUCCIO: 1:03 P.M.

THE COURT: I couldn't find that.

MR. PUCCIO: It was a little difficult. It took me a while. I'm not sure if counsel noticed the time. The time stamp is on the left side on one of the white pieces.

THE COURT: Am I waiting for any other testimony that might pinpoint it? Do you have anything?

MR.IANNUZZI: Well, the only thing I was going to suggest, Judge, is perhaps to follow the entire sequence from the Taft to the Waldorf Astoria because --

THE COURT: I didn't want to do that because I thought you might object to it.

MR. IANNUZZI: No, I wouldn't object to it.

THE COURT: I only -- if it gives any more, I will be glad to read it. I thought you might complain that they didn't ask for it and I was reading --

MR. IANNUZZI: I think because there is no pinpointing --

THE COURT: Where should I start?

MR. IANNUZZI: Well, may we just have a second?

THE COURT: Let me ask you, do you agree that exhibit 30 says that he checked in at the Waldorf at 1:03?

MR. IANNUZZI: Well, may I just suggest that the exhibit has a printed 1:03 on it?

THE COURT: No, I don't care if you do. Because if you want to --

MR. IANNUZZI: I am not objecting to it. It is just -- you see, it doesn't have the number in -- imprinted. Only half of the stamp. 1:03 is printed.

THE COURT: How about you?

MR. KLAR: As Mr. Iannuzzi stated, we can't really tell. It is hard to determine, based on the writing, whether or not --

MR. PUCCIO: I would suggest that we just--

THE COURT: If the lawyers agree, we'll tell the jury that the lawyers agree that exhibit 30 indicates that Mr. Catania checked in at the Waldorf at 1:03 on January 11th.

MR. PUCCIO: I will consent.

MR. IANNUZZI: I am sorry.

THE COURT: If all the lawyers agree --

MR. IANNUZZI: Mr. Trolley from the Waldorf testified to that.

THE COURT: Oh, he did?

MR. IANNUZZI: Yes.

MR. PUCCIO: That he checked in at 1:03?

MR. IANNUZZI: Yes.

THE COURT: Fine. Where is that?

MR. IANNUZZI: It is in Trolley's testimony. I will find it.

THE COURT: Do you know when he testified?

THE CLERK: Yes, I will find it, Judge.

THE COURT: That was toward the end of the case. The defendant called Trolley.

MR. PUCCIO: Page 1549.

THE CLERK: On the 16th.

MR. PUCCIO: Bottom line is 1:03 P.M.

THE COURT: 15 --

MR. PUCCIO: 1549 at line 22, sir.

THE COURT: I don't have my copy.

I will call them back and read that for whatever good it does.

Bring the jury in.

THE MARSHAL: Yes, your Honor.

MR. IANNUZZI: Judge, in reference to the time of the tap, I would suggest that that begins

on 22 of 82.

THE COURT: 2282?

MR. IANNUZZI: Page 82, line 22.

THE COURT: Page 82?

MR. IANNUZZI: Yes.

THE COURT: Do you want me to read that?

MR. IANNUZZI: That might give you the chronology.

THE COURT: It's all right. 82.

MR. IANNUZZI: Page 82.

In other words, this is just a page and a half in advance of what you read.

THE COURT: Line?

MR. IANNUZZI: 22.

THE COURT: Line 22 to --

MR. IANNUZZI: Well, then it goes up to the point where you began reading at 84, line 13.

THE COURT: Do I go to 84, line 13?

MR. IANNUZZI: That's where you already read from.

THE COURT: Shall I read it?

MR.IANNUZZI: If you wish, surely.

THE COURT: All right.

Seat the jury.

THE MARSHAL: Yes.

(Whereupon, the jury entered the courtroom.)

THE COURT: The lawyers thought that if I read a little more, it might give you some idea.

Again, the question is, what time did Catania meet Dasti at the Waldorf Astoria Hotel on January 11th.

The testimony of Mr. Gordon C. Trolley, direct examination by Mr. Iannuzzi, line 10.

(Record read.)

THE COURT: I suspend at line 12 and I go to line 15.

(Record read.)

THE COURT: I suspend at line 25 at page 1549 and I go to line 8 on page 1550, line 6.

(Record read.)

THE COURT: I suspend at line 10 on page 1550. I am going to read more of Mr. Catania's testimony at the suggestion of the lawyers, beginning at line 22 on page 82.

(Record read.)

THE COURT: Direct examination by Mr. Puccio.

(Record read.)

THE COURT: Of Mr. Catania.

(Record read.)

THE COURT: I suspend at line 23 on page 82, and I go to line 4 on page 83.

(Record read.)

THE COURT: And then I had read that part of it where the documents were marked 30 for identification and ultimately marked 30 in evidence. And that's about all we can find that bears on the question.

The jury is excused. And again, I'd appreciate knowing what you want me to do about dinner.

(Whereupon, the jury retired from the courtroom.)

THE COURT: Did I return the transcript that you gave me?

MR. PUCCIO: Not yet. 1549, Trolley. I've got a little card in front.

THE COURT: All right.

(Recess taken.)

THE COURT: Instead of sending me a note as I instructed the foreman to do, they dealt more effectively by just giving the marshal 12 orders for dinner, which means that they expect to be here beyond 8 o'clock. Then this note came, can you make calls for us to our homes?

Instead of calling the jury into the courtroom, I would like to tell the marshal to just have them write their messages and the telephone number and give it to them.

All right?

MR. IANNUZZI: Yes, yes sir.

MR. KLAR: No objection.

MR. PUCCIO: No problem .

(continued next page.)

THE COURT: So you did tell them to write the message and the phone number and the party that they want you to talk to and the message will be conveyed.

THE CLERK: Jury note marked Court Exhibit 9.

THE COURT: Now, the restaurant tells us that the order will be here in 15 minutes. I don't believe it.

MR. PUCCIO: Which restaurant is that?

THE COURT: Picadilly. That means about 14 sandwiches. And then they have to get here.

MR. PUCCIO: They are pretty fast. Maybe not 15 minutes. They are pretty fast when they deliver.

THE COURT: Not when we want them to be fast.

Now, if as soon as they get here, I'd like to tell the -- as soon as the food gets here, I'd like to tell the jury -- or if you want to do this: I can call the dinner hour now, and ask you to get back by 7:30 based on their estimate. But I would like to be able to tell the marshal in the event a note does come in the meantime, that nothing can be done until 7:30.

MR. IANNUZZI: Well, why don't we do it this way: why don't we wait until they get their food

and --

THE COURT: It's all right with me, except this: they can finish their sandwich in 15 minutes because it's here.

MR. IANNUZZI: Yes.

THE COURT: You have to walk to the place, sit down at a table and order your dinner.

MR. PUCCIO: Well, why don't we just have the marshal --

THE COURT: So they will be through.

MR. PUCCIO: Why not have the marshal tell them that the Judge won't be -- the note won't be acted upon until 7:30?

THE COURT : That's what I wanted to be able to tell them. I usually tell them -- if I bring them in, it means bringing up the defendant.

MR. IANNUZZI: It's all right with me.

MR. PUCCIO: It's all right with me.

MR. KLAR: Fine.

THE CLERK: 15 or 20 minutes?

THE COURT: It's 15 or 20 minutes. It will probably get here by about 6:30 and they will be through with their food by about 7.

If I don't release you now, you won't have any time.

MR. IANNUZZI: Yes, sir.

So we will make it 7:30.

MR. PUCCIO: We will be back at 7:30.

THE COURT: All right.

Would you like to listen to the message that the marshal gives the jurors?

MR. IANNUZZI: You mean actually overhear him tell it?

THE COURT: Yes, from here, so there is no question about what he told them. I am always uneasy about the marshal contacting the jurors. I never ordinarily, permit it. But if you want me to do it the way I usually do, we will call the defendants up and we will bring them into the courtroom.

MR. IANNUZZI: That is not necessary.

THE COURT: They will follow orders. But you can stand by the door inside the courtroom and you will hear him.

Keep the door open. I want you to say that their dinners will be here about 6:30. I have released the lawyers for dinner. And that I cannot answer any note until 7:30.

All right.

Just keep this door open.

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jb:m

You stand out of view and you will hear it so there is no question about it.

You can do the same thing, Mr. Puccio.

MR. PUCCIO: I have faith in the marshal, your Honor.

THE COURT: I think so.

MR. PUCCIO: I think he can communicate that.

xxx

THE COURT: But I like to eliminate every question.

THE MARSHAL: They asked me about the calls -- if the calls will be made at 7:30.

I said they will be made as soon as you can get them together.

THE COURT: Yes.

All right, 7:30, gentlemen.

(Recess taken.)

(continued next page.)

THE COURT: "Your Honor, we would like a definition on the second charge again."

I assume they are asking for the charge on count two.

Mark that.

THE CLERK: Jury note is marked Court Exhibit 10 for identification.

(So marked.)

THE COURT: All right, seat the jury.

(Whereupon, the jury entered the courtroom at 9:30 P.M.)

THE COURT: I assume your note asks me to recharge the law on count two. Well, first I will read count two.

On or about the 10th day of January, 1971, within the Eastern District of New York, Frank Cotroni, Frank Dasti, Guido Orsini, Paul Oddo, Jorge Asaf y Bala and Claudio Martinez, the defendants, willfully, knowingly and unlawfully did receive, conceal and facilitate the transportation and concealment of approximately nine kilograms of cocaine, a narcotic drug, after the narcotic drug had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

Now, I charge you the Government must prove beyond a reasonable doubt three central elements of that charge.

First. The act or acts of receiving and concealing in any manner, or in any manner facilitating the concealment or transportation of the cocaine as alleged, and proving that the cocaine had been imported or brought into the United States of America contrary to law.

Second. Doing such act or acts with the knowledge that the cocaine had been imported or brought into the United States of America contrary to law.

Third. Doing such acts knowingly and unlawfully.

In other words, the charge is that Frank Cotroni and Frank Dasti, together with others, knowingly and willfully received nine kilograms of cocaine onor about January 10, 1971.

Now, I further charged that the Government need not prove that the defendants committed every act that constitutes the crime. The Government must first prove beyond a reasonable doubt that someone committed the crime charged, that all the elements of the charge are established, but doesn't have to prove that the defendants committed each and every act charged, because the Government charges the defendants under Section 2,

which is the aiding and abetting statute, which says, in effect -- or which says in ad hoc verba, "Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

"Whoever wilfully causes an act to be done, which if directly performed by him or another, would be an offense against the United States, is punishable as a principal."

In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense. Participation is wilful if done voluntarily and intentionally and with specific intent to do that which the law forbids.

In order to aid and abet another to commit a crime, it is necessary that the accused wilfully associated himself in some way with the criminal venture, and wilfully participated in it as he would in something he wishes to bring about. That is to say, that he wilfully seeks by some act or omission of his own to make that criminal venture succeed.

So if the Government had proved beyond a reasonable doubt that Paul Oddo received nine kilograms of heroin, that he did it knowingly and wilfully, or that he concealed the nine kilograms of heroin on or about January

10, 1971, or committed any of the other acts, facilitated the transportation and concealment of the nine kilograms of heroin, and that the Government proved all the essential elements of the crime charged that I just enumerated for you as it relates to Paul Oddo, you may find the defendant or the accused guilty. If you find that the accused aided and abetted the commission of that crime. In other words, if you find that the accused knowing the unlawful purpose in receiving, concealing, transporting the nine kilograms of cocaine, participated in it, that he did something, that the accused performed an act or acts which helped in the receiving and in the concealing and in the transportation or facilitated the transportation.

I also said to you that there is another theory of imposing criminal liability, which is another way of saying, finding the defendants guilty. If after you considered all the evidence in the case, if you find by proof beyond a reasonable doubt that the offense charged in count two of the indictment was committed, and you further find from the evidence that the Government established the existence of the conspiracy alleged in the indictment, and that at the time of the commission of the offense alleged in count two, the accused was a member of the conspiracy, and, further,

that the crime was committed in furtherance of the objective of the unlawful conspiracy, to wit, to deal in cocaine, then the accused that you find to be such member is guilty of the crime charged in count two by reason of his participation in the conspiracy.

In other words, the Government need not prove that the accused was present at the time or place the criminal actwas committed, if the Government proves beyond a reasonable doubt, one, the conspiracy charge in count one.

Two, that a member of the conspiracy committed the offense charged in count two.

Three, that the offense committed in count two was committed during the term of the conspiracy and in furtherance of the objects of the conspiracy.

And four, that the accused was a member of the conspiracy at the time the offense was committed.

The jury is excused for further deliberations on the matter, but before you commence deliberations I want to talk to the lawyers to see if they have any objection to what I said. And I will call you back and tell you that you may recommence deliberations on the matter.

(Whereupon, the jury retired from the courtroom).

THE COURT: Any objection to the supplemental

charge?

MR. KLAR: Yes, your Honor. On three separate occasions I believe you charged the jury on heroin and not cocaine.

THE COURT: Did I say heroin?

MR. KLAR: Yes. I counted at least three times.

MR. PUCCIO: I didn't hear it, but Agent Tobin indicated that you did. I completely missed it if you did.

THE COURT: Any other objections?

MR. IANNUZZI: Well, one, to the effect that the act of Mr. Oddo -- all of the acts of Mr. Oddo took place in the Southern District of New York and not this jurisdiction. And if they find that the acts were not in this jurisdiction, I submit that perhaps that might be grounds to find that they have not committed the acts as charged.

THE COURT: Any aiding and abetting act within this district?

MR. IANNUZZI: I didn't get your question.

THE COURT: Were any of the acts that might constitute aiding and abetting committed within this district?

MR. IANNUZZI: They might find that flying in, etc. , of course.

MR. PUCCIO: That is not by these defendants.

MR. IANNUZZI: No. I understand.

MR. PUCCIO: I didn't hear the beginning of your objection.

MR. IANNUZZI: And I would take an exception to that aspect of the charge.

I would like to request also --

THE COURT: This is a fine time to raise it.

MR. PUCCIO: I am sorry, your Honor.

THE COURT: In other words, Mr. Iannuzzi is talking about the commission of the crime in the Southern District in New York, the receipt of the cocaine. But that's quite immaterial if any of the acts constituting aiding and abetting were performed in this district.

MR. IANNUZZI: Not by these defendants.

MR. PUCCIO: As I understand it, Catania and Martinez, who were allegedly conspirators, committed the act of concealing heroin in the Eastern District by arriving at Kennedy Airport, and, as Catania testified, going from Kennedy Airport to the Hotel Taft in Manhattan.

THE COURT: No. This charge is charging these defendants with aiding and abetting.

MR. IANNUZZI: Yes, sir.

THE COURT: There must be an act of aiding and abetting within the district.

MR. PUCCIO: I don't believe so.

THE COURT: The fact --

MR. PUCCIO: If they committed an act in Canada which aided and abetted the commission of a crime in this district --

THE COURT: The commission of the crime is the receiving and concealing.

MR. PUCCIO: That took place in this district.

THE COURT: Where? How?

MR. PUCCIO: From Kennedy Airport to the Hotel Taft. The cocaine was physically carried by two of the conspirators.

THE COURT: Who did it?

MR. PUCCIO: Catania and Martinez. In other words, the Government is charging in the indictment that Cotroni and Dasti aiding and abetting Catania and Martinez in their transportation of the heroin from Kennedy to the Hotel Taft.

THE COURT: That wouldn't be true of the receiving, would it?

MR. IANNUZZI: No, sir.

MR. PUCCIO: Well --

THE COURT: Of course, there was receiving.

MR. PUCCIO: There was receipt at Kennedy Airport as well.

THE COURT: There was receiving by Bynum.

MR. PUCCIO: There was receiving by Bynum in Brooklyn.

MR. IANNUZZI: Not by these defendants.

THE COURT: Bynum isn't charged in that count.

MR. PUCCIO: But he's a co-conspirator.

THE COURT: That's a different theory.

MR. PUCCIO: Well, he is a co-conspirator, your Honor, I would submit in the same way that Catania and Martinez are co-conspirators. He's just another link in the chain.

MR. IANNUZZI: Not charged.

MR. PUCCIO: Legally --

THE COURT: I can see the crime of transporting the heroin.

MR. PUCCIO: It took place in the Eastern District.

THE COURT: It took place in the Eastern District, when Catania -- when Martinez and Catania came into Kennedy. They took the cocaine into New York. And it was transferred to the Riverside Plaza. The receiving was there. So the crime of receiving could not be in the Eastern District.

You can have it -- you can have it venued in the Eastern District if either the crime was committed here

or the persons charged with aiding and abetting committed those acts in the Eastern District.

MR. PUCCIO: All right. Well, originally when the case was indicted, the theory would be that Martinez concealed and facilitated the transportation and concealment of nine kilograms of cocaine. And I believe the indictment always made reference to the word "received" but it would be in the disjunctive. But later when this other evidence was developed, and as it turned out when the trial was presented, you do have a natural receipt of heroin by Cordvano and Bynum and Stewart.

Well, Stewart wasn't a conspirator. He was a government agent.

And Cordvano and Bynum.

THE COURT: Not nine kilos. Five kilos. And not at this time.

MR. PUCCIO: Well, very very close. It is on or about the 10th. This is the early --

THE COURT: We don't even know who took the other four kilos.

MR. PUCCIO: Well, I would submit that you have in the indictment approximately nine kilograms.

THE COURT: No, sir.

MR. PUCCIO: And you have approximately the ten --

THE COURT: No, sir. I have to charge them

that they must disregard the evidence of receiving. I will tell them why. The charge of receiving. Just eliminate it. The charge is that the defendants aided and abetted in the transportation --

MR. PUCCIO: It would be the --

THE COURT: (Cont'g) -- the concealment and facilitating the transportation and concealment of the nine kilos.

MR. IANNUZZI: Judge, was it concealed? I suggest that it wasn't even concealed in this district. If it was --

MR. PUCCIO: Well --

MR. IANNUZZI: Except of course --

THE COURT: That is a fact question. Just as receipt.

MR. IANNUZZI: Yes. But if it wasn't received in this district, it also wasn't concealed. It may have possibly been merely a transportation, but I don't -- I suggest that it wasn't a concealment.

THE COURT: That is a fact question for the jury. They certainly didn't carry it on their lapels.

(Continued on next page.)

MR. IANNUZZI: I understand. And then again, sir, we have it not by these defendants.

MR. PUCCIO: Your Honor, I understand from Agent Tobin that I am referring to the substance of cocaine as heroin right now myself. So maybe --

THE COURT: I don't know how --

MR. PUCCIO: (Continuing) -- too many heroin cases.

THE COURT: That's right.

MR. PUCCIO: Your Honor, I would ask, if your Honor please, if your Honor is planning to revise the charge, that you do specifically point, as you did with Oddo, to the fact that what is referred to is the concealment and transportation by Martinez and Catania, if they are found to be co-conspirators. And it is their transportation in the Eastern District. That is referred to by that count. Rather than Mr. Oddo's receipt of the heroin in Manhattan.

MR. KLAR: Cocaine.

MR. PUCCIO: I am sorry. Cocaine.

THE COURT: I am sorry. I can say that the defendants can only be charged with the crime that occurred in this district. And since the receipt -- the evidence of receipt occurred in another district, they must eliminate that charge from this count and

only this count. Nothing to do with the other.

Now, I will give you an alternative, Mr. Puccio. And that is to tell them to disregard the theory of aiding and abetting and rely solely on Pinkerton.

MR. PUCCIO: Well --

THE COURT: You make that choice.

MR. PUCCIO: I would rely on both, your Honor. I would rely on the transportation in the Eastern District and the --

THE COURT: All right.

MR. PUCCIO: By Martinez and Catania and the Pinkerton theory as well.

THE COURT: All right. Call them in.

MR. KLAR: For the record, may I just join in the last exception made by Mr. Iannuzzi.

THE COURT: Yes, you have an exception to every exception that Mr. Iannuzzi made.

MR. IANNUZZI: Before you do, may I have a request that just either of the defendants -- in other words, that you kept saying, the accused. You didn't say one word that either or both. In other words, that one of them might have been guilty of this without both of them being guilty of the second count. I would only ask that you separate the concept for the

jury at --

THE COURT: Do you want me to say, convict Mr. Dasti and convict Mr. Cotroni?

MR. IANNUZZI: I don't want you to say that at all. I am just suggesting that the defendants stand on their own.

THE COURT: I said that all through the charge.

MR. IANNUZZI: Well, you didn't say it this time.

THE COURT: I didn't say it again. I didn't repeat many things again. And I don't intend to repeat my whole charge.

MR. IANNUZZI: No, I didn't say that.

THE COURT: Seat the jury.

MR. IANNUZZI: May I have an exception?

THE COURT: You have an exception.

MR. IANNUZZI: Thank you.

THE COURT: Seat the jury.

(Whereupon, the jury entered the courtroom.)

THE COURT: Now first, again, I regret that I said heroin on one or more occasions -- and I see the jury recognizes that it was a mistake -- instead of cocaine. We are not dealing with heroin at all except to the limited extent I charged you on. Count 2 deals with 9 kilograms of cocaine.

A rather important but technical objection -- but proper objection -- was made to the charge in the second count. Now, it has nothing to do with the first count. Only to the second count. Because the second count charges knowingly and unlawfully and wilfully did receive, conceal and facilitate the transportation and concealment of approximately 9 kilograms of cocaine.

A defendant may be charged only on the substantive count only in the district in which the crime took place or the alleged crime took place. There is no proof that anyone received any -- either defendant or any party received 9 kilograms of cocaine within the Eastern District of New York. If you notice the count alleges at the outset, on or about the tenth day of January, 1971, within the Eastern District of New York, the following took place.

The parties agreed there was no receipt of any cocaine within the Eastern District of New York. So strike that. There being no proof, you cannot rely on that charge.

But this is in the disjunctive, or. The charge is now that the defendants Frank Cotroni and Frank Dasti concealed -- and concealed means to hide -- within the Eastern District of New York, not revealing,

and facilitating the transportation and concealment, which means making easy the movement of the 9 kilograms of cocaine, and making easy the concealment of the 9 kilograms of cocaine.

Now, the only proof in the record is that Mr. Catania and Mr. Claudio Martinez got off at Kennedy Airport and drove to New York with the 9 kilograms of cocaine.

And the Eastern District of New York, incidentally, is Brooklyn, Queens, Nassau, Suffolk and Richmond.

So those are the acts that we are talking about, those that took place within the Eastern District of New York.

And the question for your determination is whether the defendants or either of them -- and you judge each one separately -- did anything to encourage, counsel, advise, participate in that criminal act alleged, to wit, the concealment and the facilitation of the transportation and concealment of approximately 9 kilograms of cocaine.

So again I charge you, the Government must prove beyond a reasonable doubt, that the accused aided and abetted in the commission of that crime, or alternatively, the Government must prove beyond a reasonable doubt that a conspiracy in Count 1 is

established. And that means for the purpose and during the time alleged.

Two, that a member of the conspiracy committed the offense charged in Count 2.

Three, that the offense committed in Count 2 -- in other words, the concealment and the facilitation of the transportation and concealment of approximately 9 kilograms of cocaine was committed during the time of the conspiracy and in furtherance of the purpose of the conspiracy.

And four, that the accused was a member of the conspiracy at the time the offense was committed.

If the Government proves all that beyond a reasonable doubt, then you may find the accused guilty. If the Government fails to prove that and also fails to prove the aiding and abetting of the offense, then you must find the defendants, the accused, not guilty.

The jury may be excused to deliberate further on the matter.

(Whereupon, the jury retired from the courtroom.)

MR. KLAR: If I may --

THE COURT: First, do you have any exceptions to the charge?

MR. PUCCIO: No, I don't have any exceptions, your Honor.

MR. KLAR: One thought occurred to me, your Honor. And that is, if the -- the crime is concealing or facilitating the transportation of cocaine, I think there has to be an intention or knowledge on the part of the defendants that they knew that cocaine was in the Eastern District of New York. If they don't know --

THE COURT: That is, within the Eastern District of New York.

MR. PUCCIO: That is not so. They don't have to know that it's in the Eastern District.

THE COURT: Knowledge and wilfulness, I think I charged when I charged aiding and abetting. But there is nothing in any case that I have ever seen that requires that aiding and abetting the -- in aiding and abetting, the Government must prove the defendants knew it was going to be committed in this district. No.

MR. KLAR: I am just suggesting --

THE COURT: That is far-fetched.

(continued next page)

MR. KLAR: I am just suggesting that if they don't know that the narcotics is within the district, then they can't aid or abet, and wilfully and knowing --

THE COURT: The fact of the commission of the crime places venue? Criminal intent is phrased in the language of the crime itself, not venue.

In other words -- of course, the Government must prove in aiding and abetting that they knew that they are aiding and abetting a cocaine deal, and the possession or -- and possession of the cocaine, and they did what they did voluntarily and intentionally to aid the concealment and transportation. But I know of no case, no rule, no statute that requires proof that they knew it was going to be committed in the Eastern District of New York in order to venue it here.

MR. IANNUZZI: May I have an exception to your Honor's charge?

THE COURT: Surely. Be specific. Not an exception to the charge.

MR. IANNUZZI: I suggest in reference to the charge, the concealment aspect of it, I think that the transportation and the concealment are two separate aspects of it, just as the reception thereof is. I suggest that while one is transporting it, there is --

2 we have no proof with reference to the transportation that it has to be in some fashion transported. I think it is begging the question to suggest that that statement that you -- your charge -- that it was transporting and your charge with concealing, because if you're transporting, you're not concealing. If you're concealing, you're not transporting. They can't be done both at the same time.

THE COURT: Really?

MR. IANNUZZI: Yes, sir.

THE COURT: You don't think one act can commit two crimes?

MR. IANNUZZI: I think that is possible, sir, but at the moment of transportation -- I mean the concealment of transportation must necessarily take a transporting of something in order to transport it. It has to be, let's say, carried, brought --

THE COURT: Sure.

MR. IANNUZZI: Something.

THE COURT: But you can't transport it in the open.

MR. IANNUZZI: I understand. But there is no proof whatever that there was any concealment at all, except for the transportation. That is to say, the carrying.

I suggest that once the transportation ceases, concealment is separate and apart.

MR. PUCCIO: That is not so in this case. It was concealed in a zipper bag, as I remember.

MR. IANNUZZI: It has to be carried in something. Is that concealment pursuant to the statute?

THE COURT: Could be.

MR. IANNUZZI: Or does it say, after it is transported, it was never concealed in this district.

THE COURT: You think the concealment must take place in the form of stashed under the floorboards or in some vault?

MR. IANNUZZI: Well, to an extent, sir, in order to carry it, it would even have to be carried in the hands. I mean if one carries it in the hands --

THE COURT: You don't think if someone carries --

MR. IANNUZZI: It can't be carried out in -- not touching anything. It can't be totally in a vacuum as it is being transported.

THE COURT: If we had someone charged with transporting cocaine in a false bottom in a valise, which is the very usual way of doing it, or in the soles of his shoes --

MR. IANNUZZI: Yes, sir.

THE COURT: You don't think that is both

4 concealment and transportation?

MR. IANNUZZI: It gets very close in that situation. But I suggest we have no proof in this case that that was done. As a matter of fact, we have no proof how it was done. And I would suggest that without proof that it was concealed --

MR. PUCCIO: Your Honor, I believe on redirect, the first couple of questions dealt with this to bring it out a little more clearly than it was in the direct examination. It was, as I recall the testimony, concealed in a bag, arrived with it at Kennedy, and went by taxicab to the Taft Hotel.

MR. IANNUZZI: That is using the same word to define it and to describe it. I suggest when one brings one's luggage in from Europe, one isn't concealing.

MR. PUCCIO: On this statute, it is.

THE COURT: Really? You don't think the one act commits two crimes?

MR. IANNUZZI: No, sir. No, sir. I suggest that the act --

THE COURT: I respectfully disagree with you.

MR. IANNUZZI: I respectfully take an exception.

THE COURT: You have it.

MR. IANNUZZI: Thank you.

THE COURT: All right.

MR. IANNUZZI: May we -- should we stay or shall we --

THE COURT: It's up to you. I thought we would have a verdict in a couple of minutes. I don't have any private information. It's just that when they ask questions like that, I think they are close to a verdict.

MR. IANNUZZI: Judge, I will defer to your great experience.

THE COURT: No, I am just guessing like you are.

But all right. I will make another trip back to chambers.

(Recess taken.)

THE COURT: I have this note.

"Is the charge aiding and abetting and --"

"and" is underscored.

"Is the charge aiding and abetting and being a member of the conspiracy while the offense was taking place, or is it sufficient to be just a member of the conspiracy when the offense took place?"

Seat the jury.

THE CLERK: Juror Note marked Court Exhibit 11 for Identification.

(Whereupon, the jury entered the courtroom at

lo:10 P.M.)

THE COURT: I will answer your question quite cryptically, but I will ask you to take what I say in the context of everything I have said to you and not just this as an isolated charge.

If you find beyond a reasonable doubt that the crime was committed during the term of the conspiracy and in furtherance of the purpose of the conspiracy and you find beyond a reasonable doubt that the accused was a member of the conspiracy at the time the crime was committed, then you may find that accused guilty of the crime charged in Count Two. You need not be concerned with whether he was also an aider and abettor.

The jury is excused.

(Whereupon, the jury retired from the courtroom).

THE COURT: Mr. Puccio.

MR. PUCCIO: No exceptions.

THE COURT: Mr. Iannuzzi?

MR. IANNUZZI: I would except only to the fact that one can be an aider and abettor without being a part of the conspiracy. And therefore, they should be charted that if they find aiding and abetting without being part of the conspiracy, then I would also except to the fact that a person -- in part of

the conspiracy one has to know, I think, knowingly and wilfully undertake all the aspects of the conspiracy.

I suggest that they would have to be aware of the transportation and concealment in the Eastern District.

In other words, in order to even though being a part of the conspiracy, since it is a separate crime, they would have to knowingly and wilfully undertake that crime being committed within the Eastern District.

THE COURT: You mean the accused would have to know it? Know that that crime is being committed in the Eastern District of New York?

MR. IANNUZZI: In order to be guilty of the crime. Not only the Eastern District, but they would also --

THE COURT: As a member of the conspiracy.

MR. IANNUZZI: As a member of the conspiracy, they would knowingly and wilfully undertake to aid and abet the concealment and transportation.

THE COURT: Well, I don't believe that. I do believe that they must find that the crime was committed here for venue purpose, but -- do you have anything else to say?

MR. KLAR: No, I have nothing else except to join in that exception.

THE COURT: All right. I find that one of the most difficult concepts to convey to a jury is the conspiracy charge and the aiding and abetting side by side.

MR. IANNUZZI: Yes, sir.

THE COURT: The acts are indistinguishable. At times I say the difference is pure theory. In the one case you're entering into no agreement. In the other case you must show the crime has been completed. But where the crime is completed and you also allege a conspiracy, the confusion is almost sure to result. And that's why I suggested to you that I would just -- I asked them to disregard what I said about aiding and abetting. And the last note indicates that very thing. But I disagree with what you said.

MR. IANNUZZI: I would also suggest in following your Honor's thought that it's almost impossible to distinguish the two --

THE COURT: That's right.

MR. IANNUZZI: The conspiracy --

THE COURT: Except on a theoretical basis.

MR. IANNUZZI: If they find the chap was guilty of the conspiracy, under the charge that they got here he's almost ipso facto guilty of the other charge because they almost merge into each other. I suggest

that therefore he is getting --

THE COURT: I thought the Government was entitled to it because the defendant had no direct participation in the crime. And I think that except for Pinkerton, aiding and abetting was the only theory upon which the defendant could be convicted. And I should not deprive the Government of the aiding and abetting charge if they want it. I just think that they do themselves a disservice when they insist on both. That's all.

It's very, very difficult.

MR. IANNUZZI: All right. I except to the charge.

THE COURT: Yes. Of course, when you say except, you are confined to the statement you made.

MR. IANNUZZI: Yes.

THE COURT: If I made any other error that I might have corrected, you wouldn't be protected.

I understand your exception to be that I should charge that in order to convict on the Pinkerton theory, that they are members of the conspiracy during the time the crime was committed, but I should also charge them that they must show that the defendants had knowledge that the crime was to be committed in the Eastern District of New York?

MR. IANNUZZI: Or that the transportation and concealment --

THE COURT: Was taking place.

MR. IANNUZZI: (Continuing) -- was taking place. Not necessary --

THE COURT: That they were aware that it was taking place.

MR. IANNUZZI: Not necessarily in the Eastern District. In other words --

THE COURT: That it was taking place anyplace?

MR. IANNUZZI: Yes. Both the Eastern District -- or just that it was taking place.

THE COURT: All right. That's the limit of your objection.

MR. IANNUZZI: Well, I am also objecting, if your Honor please, to the fact that the one and the other are mutually inclusive. That is to say, that the conspiracy includes the other. And we are now charging the jury as -- we are fragmenting by giving them the conspiracy and at the same time giving them an aiding and abetting during the existence of the conspiracy.

(Continued on next page.)

THE COURT: I thought I made it clear again, though I didn't intend to do it, that each one has to be judged separately and I said the accused that you find to be a member of the conspiracy. I don't know how else I can say it.

MR. IANNUZZI: Well, that's the difficulty, Judge. It is very difficult.

THE COURT: That part I find easy.

MR. IANNUZZI; It is very difficult to distinguish. It's almost like one of the situation where something merges into the --

THE COURT: The only difficult I find is conveying to the jury the distinction between conspiracy and aiding and abetting. That's all.

MR. IANNUZZI: As part of the conspiracy.

THE COURT: But that is my task and I do the best I can. I say that usually I tell the jury there is only a theoretical distinction. Because there really is no practical distinction. The very same matter in a completed crime. Whereas in this case the defendants are not present, did not actually commit the crime. The same acts that are required to prove -- required to prove the conspiracy are the acts required to prove the aiding and abetting. Is that right?

So if it's -- as a practical matter that is so, the best I can say to the jury is, now, look, there is no real difference except on the theoretical basis.

MR. PUCCIO: I think your Honor might -- I think on the facts of this case there is a slight distinction as far as what the language of either charge connotes. That's all.

THE COURT: As a matter of fact, some of the phraseology, knowingly and wilfully participates --

MR. PUCCIO: That's right. It is the same.

THE COURT: To try to see that the venture succeeds. Well, that's what you are saying when you are talking about knowingly and wilfully entering into the conspiracy. But --

MR. PUCCIO: We don't even normally add a substantive count. But in this type of case -- but there is a special reason in this case.

THE COURT: I just said that to my law clerk on the way in. I said usually --

MR. PUCCIO: Normally it is just a one-count conspiracy.

THE COURT: Since you invited it for the record, I would say maybe it should have been prosecuted in the Southern District. But we have already done it.

MR. IANNUZZI: May I just --

MR. PUCCIO: That wasn't the reason.

THE COURT: I know.

MR. IANNUZZI: May I just suggest that your explanation to us here I think was more clear and right on the button, so to say, than the charge to the jury. I think if you could charge them that way, they might have understood it a little more simply.

THE COURT: They might have understood the distinction between --

MR. IANNUZZI: Or the lack of distinction.

THE COURT: Or the lack of distinction between aiding and abetting. But what they are interested in knowing is whether they can find him guilty on the Pinkerton theory alone. I tried to tell them that there are two theories of imposing criminal liability. One, aiding and abetting, and the other, on Pinkerton, on a member in the conspiracy. And apparently there was some dispute as to whether I said in the alternative or I used the conjunctive. That's the only sense I get out of their note. And so that's why I directed their attention first to the Pinkerton theory because I felt that that separates it from the aiding and abetting.

All right.

(Recess taken.)

THE COURT: Gentlemen, we have a verdict.

Please seat the jury.

Jury note marked Court Exhibit 12.

(Whereupon, the jury entered the courtroom at 11:05 p.m.)

THE COURT: I have your note indicating that the jury has reached a verdict.

Mr. Foreman, will you please stand?

In the case of United States of America against Frank Cotroni and Frank Dasti: As to Count 1, how do you find the defendant Frank Cotroni, guilty or not guilty?

THE FOREMAN: Guilty.

THE COURT: As to Count 2, how do you find the defendant Frank Cotroni, guilty or not guilty?

THE FOREMAN: Guilty.

THE COURT: As to Count 1, how do you find the defendant Frank Dasti, guilty or not guilty?

THE FOREMAN: Guilty.

THE COURT: As to Count 2, how do you find the defendant Frank Dasti, guilty or not guilty?

THE FOREMAN: Guilty.

THE COURT: Thank you. You may be seated.

Juror No. 2, you heard the verdict that was

rendered by the foreman. Is that your verdict?

JUROR NO. 2: Yes.

THE COURT: Juror No. 3, is that your verdict?

JUROR NO. 3: Yes.

THE COURT: Juror No. 4, is that your verdict?

JUROR NO. 4: Yes.

THE COURT: Juror No. 5, is that your verdict?

JUROR NO. 5: Yes.

THE COURT: Juror No. 6, is that your verdict?

JUROR NO. 6: Yes.

THE COURT: Juror No. 7, is that your verdict?

JUROR NO. 7: Yes.

THE COURT: Juror No. 8, is that your verdict?

JUROR NO. 8: Yes.

THE COURT: Juror No. 9, is that your verdict?

JUROR NO. 9: Yes.

THE COURT: Juror No. 10, is that your verdict?

JUROR NO. 10: Yes.

THE COURT: Juror No. 11, is that your verdict?

JUROR NO. 11: Yes sir.

THE COURT: Juror No. 12, is that your verdict?

JUROR NO. 12: Yes sir.

THE COURT: And so say you all.

Are there any motions to be made directed to the verdict at this time?

MR. IANNUZZI: No sir.

THE COURT: All other motions can be reserved.

MR. IANNUZZI: No sir.

THE COURT: All right. I am not going to give you a long talk about the service you rendered. It's ten minutes after 11:00. I know by the note you sent me that you seriously considered every aspect of this case. And I am satisfied the defendants got a fair trial. And after all, this is all they are entitled to. They are entitled to no more and no less.

You performed your job well. Now, your term of service has expired and you won't be back here tomorrow and you may not be back here for a long time because we have hundreds of thousands of citizens on our panel and it's rare that the citizen is called to serve on a Federal jury more than once in a lifetime.

I want to thank you for your service. You are discharged with the thanks of the Court.

I want you to know that we reserved two limousines to take you where you want to go. So when you leave the courtroom, see the marshals and they will arrange for your transportation.

I don't know how many of you have cars here. Do any of you have automobiles?

All right. So the jury is excused.

Yes sir?

THE FOREMAN: Can we get a note that I've been on jury duty?

THE COURT: Yes. Do you send it to them?

THE CLERK: If I can have the names, we will mail it to you.

THE COURT: How many want a note that you served on a jury?

Jurors Nos. 1, 2, 3, 5, 7, 11, and 12.

Will that be sent?

THE CLERK: That will be mailed to your home.

THE FOREMAN: I was told -- I work for the city. I was told to bring it in tomorrow when I go back to work.

THE COURT: How early do you go to work?

THE FOREMAN: I am supposed to go in -- I leave the house about 8:00 or a quarter to.

THE COURT: Well, there is no one to write the note. And I thought we might have it sometime tomorrow.

THE FOREMAN: Can I pick it up here?

THE COURT: Surely. That can be done.

THE FOREMAN: Where can I pick it up?

THE COURT: In the central jury room. The Commissioner of Jurors will be there.

THE FOREMAN: In the central jury room?

THE COURT: That's right.

The jury is excused.

(Whereupon, the jury retired form the courtroom.)

THE COURT: I want all the relatives and friends of the defendants to remain in the Court until the jury leaves the building. It might take about ten minutes.

I think it is appropriate to commend the lawyers for a hard fight that was fought. I recognize that there are novel questions to be reviewed.

And I think it's also appropriate to commend the Canadian Royal Mounted Police and the Quebec Police Force. I think their close cooperation with our agents put this case together. I know from the way the evidence was gathered that this was not an easy matter. I think you should be commended for your painstaking pursuit, for your professionalism and for your cooperation.

Now, the defendants will be sentenced in about six weeks. If you wish, you may reserve all motions until the date of sentencing.

MR. IANNUZZI: I would appreciate that, sir.

THE COURT: Is that what you want, Mr. Klar?

MR. KLAR: Yes.

THE COURT: I don't think there is any question

of bail. I understand that Mr. Dasti is in custody.

MR. KLAR: That's right.

THE COURT: The bail that I fixed originally is certainly adequate for Mr. Cotroni. So there is no other matter before me.

MR. IANNUZZI: Will you entertain an application to reduce the --

THE COURT: I will always entertain an application to reduce the bail.

MR. IANNUZZI: Rather than making it now I will make it on papers.

THE COURT: All right. Now, again, I would appreciate it if everyone remained in Court until the jury has left the courtroom. And that will probably be in about another five minutes.

Good night, gentlemen.

* * *

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Joseph Barletta

Official Court Reporter
U. S. District Court

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAR 27 1975
TIME A.M.
P.M.

UNITED STATES OF AMERICA,

- against -

FRANK CONTRONI,

Defendant.

73 CR 898

MOTIONS

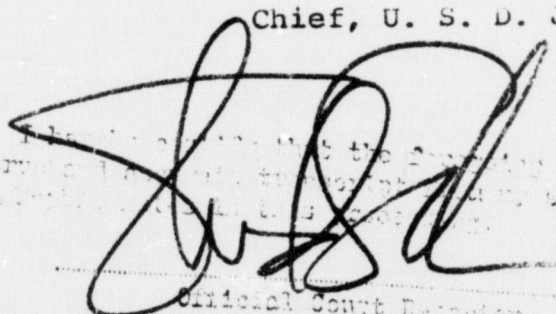
United States Courthouse
Brooklyn, New York

March 24, 1975
10:05 o'clock a.m.

B e f o r e :

HONORABLE JACOB MISHLER,

Chief, U. S. D. J.



Official Court Reporter
U.S. District Court for the
Eastern District of N.Y.

SHELDON SILVERMAN
ACTING OFFICIAL COURT REPORTER

A P P E A R A N C E S :

DAVID G. TRAGER, ESQ.
United States Attorney for the
Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant U. S. Attorney

JOHN IANNUZZI, ESQ.
Attorney for Defendant.

* * * *

THE COURT: I'll assume, as I have in the opinion I've written, that both Controni and Dasti -- Mr. Marshal, bring Mr. Dasti in, too.

THE MARSHAL: Yes, sir.

THE COURT: -- that Controni and Dasti moved to set aside the verdict on the ground that the deliberations and verdict weren't fairly arrived at because of the letter I received from Mary K. Lewis.

I'm not going to hear argument on it. I don't think there's anything to argue. When you argue your appeal, you can add that as one of your points.

MR. IANNUZZI: Might we be heard in any respect?

THE COURT: You'll have an exception. I'm not going to hear argument on that.

MR. IANNUZZI: May we, if your Honor please, for the purpose of the record, read into the record a copy of the letter that was sent by the juror?

THE COURT: I put the substance of it in my opinion. You can mark the original. We'll mark it as a Court exhibit.

THE CLERK: Letter marked Court Exhibit 1.

(So marked.)

MR. IANNUZZI: If your Honor please, in the

memorandums supplied to counsel this morning --

THE COURT: Pre-sentence report.

MR. IANNUZZI: No, Mr. Puccio submitted to us at least, or at least permitted us to see a copy of the memorandum which he was going to submit to the Court, in which it is indicated that there were no letters.

Just to clarify the record, I think that is on the last page of Mr. --

THE COURT: I didn't read Mr. Puccio's memorandum. When he gave it to me, I told him I already wrote my opinion.

MR. IANNUZZI: I haven't seen a copy of your Honor's opinion.

THE COURT: You have it now.

THE CLERK: That's what I just gave you.

MR. IANNUZZI: I now have received a copy of your Honor's decision --

THE COURT: Where does Mr. Puccio say there were two letters?

MR. IANNUZZI: Page 2 of his memorandum.

THE COURT: I sent Mr. Puccio what I sent you.

MR. IANNUZZI: All I suggest, sir, is that this is what's contained in the memorandum.

THE COURT: The Court received --

MR. PUCCIO: Your Honor, I have two letters. I have two letters, both dated February 23, 1975.

THE COURT: I received it in one envelope.

THE CLERK: There are two letters, your Honor.

THE COURT: Where she said you can destroy it if you wish? That's right, but the one letter made no reference to the deliberations. She just made some recommendations on how I should handle the Jury.

"Jurors must have lunch or dinner outside the deliberation room, if only in a larger room where they can relax and have time for themselves.

"2. Every two and a half hours they should have a 30-minute break outside the deliberation room.

"3. They should not be permitted to deliberate after 9:30 p.m."

It's useful to hear from jurors, but I'm not going to conduct my Jury any other way than I have in the past.

Some jurors ask to stay until 9:30, 12:00 midnight, 2:00 o'clock in the morning.

I'm not going to deny them that privilege if they want to do that.

MR. IANNUZZI: Yes.

THE COURT: There were two letters, but I didn't pay attention to the other one.

MR. IANNUZZI: Might I, with the Court's

permission, although your Honor has indicated in his decision that the contents or part of the contents -- would it be permissible to read the letter into the record so we can preserve more readily.

THE COURT: Go ahead, take the time.

MR. IANNUZZI: Thank you, sir.

This is an address, "35 Cheryl Lane North, Farmingdale, N. Y. 11735, Feb. 23, 1975.

"The Honorable Judge Mischler, U. S. Dist. Judge, Eastern Dist. of N. Y., Brooklyn, N. Y.

"Dear Sir: From Jan. 6, 1975 thru Jan. 21, 1975 you presided over the U. S. Government vs. Dasti-Controni case and I served on that jury. In deliberations I changed my opinion from 'Not Guilty' to 'Guilty.' When I gave my decision to the Court I was most sincere and convinced this was right.

"Now that I have had time to consider all aspects of the case again I find myself wondering why I changed my decision. Weakness in character? Perhaps. Combine that with complete exhaustion and you have a better picture. Is it standard procedure to let a jury deliberate for approximately ten hours without a break of any kind? Not even at lunch or dinner did we have time to relax and collect our thoughts. I think it is most unfair to the jurors

as well as the defendants--we all have to live with the decision. Under these conditions, one standing in the minority would have to be an extremely strong, willful and experienced person not to falter and change opinion.

"In the Handbook for Jurors it state (1) 'To decide cases correctly, jurors must be honest and intelligent. They must have both integrity and judgement.'

"(2) 'In a very real sense, therefore, the people must rely upon jurors for the protection of life, liberty and the pursuit of happiness.'

"Do you believe this can be accomplished when deliberations are permitted to go on for ten continuous hours? I believe it is very important to have time to gather ones thoughts and examine his conscience for his true feelings. One can not do this in a deliberation room with eleven people around.

"In the Jury Room the deliberations were conducted in a very fair and just manner.

"Judge Mishler, I admire and respect the unbiased way you conduct your Court. If in your opinion the verdict of Guilty was a fair and just decision, then please destroy this letter. I hope I have not offended you in any way.

"I am enclosing a few suggestions which I feel should be incorporated in the laws governing a 'Jury in Deliberation' in all levels of government.

"Respectfully yours, Muriel K. Lewis."

Then there's a second or what has been referred to as a second letter which your Honor indicates has suggestions.

Perhaps just for the sake of completness, I should read that.

"35 Cheryl Lane North, Farmingdale, New York, 11735, Feb. 23, 1975.

"The Honorable Judge Mishler, U. S. Dist. Judge, Eastern Dist. of N.Y., Brooklyn, N. Y.

"Dear Sir: Listed are a few suggestions I believe should be incorporated in the laws governing a 'Jury in Deliberation' in all levels of government.

"(1) Jurors must have lunch and/or dinner outside the deliberation room. If only in a larger room where they can relax and have time to themselves.

"(2) Every 2 1/2 hours they should have a thirty minute break outside the deliberation room.

"(3) They should not be permitted to deliberate after 9:30 p.m.

"Respectfully yours, Muriel K. Lewis.'

That's indicated Court Exhibit 1.

Your Honor does not wish to hear anything further on that?

THE COURT: No. I know as much about it as you do. I sent you the letter.

MR. IANNUZZI: Yes, of course, sir.

THE COURT: I denied your motion for a new trial based on that ground or alternately for a hearing.

MR. IANNUZZI: Yes, sir.

THE COURT: I think the law is too clear to permit extended argument or even brief argument.

If you want to argue it, argue it with the Court of Appeals. They may lend a more sympathetic ear than I will.

MR. IANNUZZI: Very sell, sir.

MR. PUCCIO: Your Honor, I have a matter to take up before sentence.

During the pre-trial proceedings in this case, a motion was made for disclosure of electronic surveillance. At that time I indicated that the United States Government or any of its agencies had not conducted, to my knowledge, electronic surveillance of Mr. Controni or Mr. Dasti with the exception of the surveillance that was conducted concerning Mr. Dasti which was the subject introduced in his trial in New Jersey.

Since that time I've received an affidavit signed by Mr. Thomas J. O'Malley, attorney with the United States Department of Justice.

I would like to file that affidavit. This affidavit indicates that requests have been made of various U. S. governmental agencies to search their files in connection with this matter; that is, to determine whether in their files there's any record of electronic surveillance conducted on premises owned or licensed or owned or leased or used by Controni or Dasti.

In effect, it's an inquiry of the agency's determination to determine whether Dasti or Controni were overheard during U. S. governmental electronic surveillance directed at them or anyone else.

THE COURT: What agency do you make inquiry of?

MR. PUCCIO: Federal Bureau of Investigation, Drug Enforcement Administration, the United States Secret Service, the Internal Revenue Service, the U. S. Customs Service, Bureau of Alcohol, Tobacco & Firearms, and U. S. Postal service.

The response from these agencies is that there is no record in their files indicating surveillance conducted by these agencies of Mr. Controni or Mr. Dasti or is there any record in their files

indicating Mr. Controni or Mr. Dasti were overheard during surveillance directed at others concerning those agencies.

I ask this affidavit be filed and I note, your Honor, that there was no inquiry made of the Central Intelligence Agency which in my experience in the past has been involved in certain narcotics investigations from time to time.

I can make the representation now that Mr. Dasti and Mr. Controni were not overheard, to my knowledge, during anyelectronic surveillance conducted by the Central Intelligence Agency directed at them or directed at anyone else.

If the Court wishes, I would obtain subsequent to the sentence an affidavit from the Central Intelligence Agency, but to my knowledge, Mr. Dasti or Mr. Controni have not been overheard during any surveillance, electronic surveillance conducted by them.

I do note that the only record of surveillance I now have conducted by United States government agencies is the electronic surveillance of Mr. Dasti, actually telephone wiretap on the telephone subscribed to Mr. Paul Falcon, the number was 201-461-9164.

This phone was located at an apartment at

201 Krause Street, in Fort Lee, New Jersey.

Mr. Iannuzzi was counsel in this case, I believe.

MR. IANNUZZI: At one time, I was, sir.

MR. PUCCIO: He indicates the man is Pasquale.

At any event, this is the information I have available. I might note we're all aware of the Jersey wiretap because it was introduced at the trial in New Jersey.

However, I've never made reference to that wiretap or any transcript that may have been made or tapes that may have been made during this trial; to this date, I have no knowledge of what they contain, other than I did note Mr. Dasti was overheard during that electronic surveillance.

I ask this be filed.

THE COURT: It may be filed.

I suggest you do get an affidavit indicating, if it can, that there was any other surveillance or wiretapping by the CIA.

MR. PUCCIO: I will obtain an affidavit either from the Department of Justice pursuant to a request of the Central Intelligence Agency, or an official in the Central Intelligence Agency, concerning any record they may have in their files of surveillance

of Dasti and Controni.

At the present time I know of none.

One further matter I want to bring up at this time in connection with this.

During the pre-trial proceedings, I indicated that we would submit in response to inquiry by counsel, we would submit an affidavit in camera concerning affidavits of foreign governments.

We have -- concerning wiretapping or any electronic surveillance of foreign governments pertaining to Mr. Dasti and Mr. Controni, having considered the matter, we have decided not to submit any further matters on this matter.

In line with the Toscanino decision and with the Lujan decision, we take the position that it is only surveillance conducted by United States government agencies which is material and not surveillance in which the United States agencies had no part.

We would rest on the affidavits submitted and the additional affidavit which we will submit pertaining to any Central Intelligence Agency surveillance.

We will not submit any further affidavits conducting or concerning any surveillance that may or may not have been committed by any foreign government since we believe it is not material.

I might point out there's been no allegation that foreign governments have conducted electronic surveillance at the instigation of the United States in this case.

MR. IANNUZZI: If your Honor please --

MR. PUCCIO: I might say I know of no foreign government that has conducted electronic surveillance of Mr. Dasti or Mr. Controni at the instigation of the United States.

MR. IANNUZZI: If your Honor pleases, I would merely suggest that perhaps it would be better to have some indication from foreign government, particularly Canadian authorities, because although Mr. Puccio says it was not contended, the defense did contend that throughout the trial and throughout the hearing that perhaps the Canadian government conducted the wiretaps with the aid and knowledge and perhaps urging of the United States government, and it is the defense contention, of course, as your Honor well knows, that when the United States teli-communications network is involved regardless of who conducts the wire surveillance, that Title 3 of our present wire-tapping or electronic surveillance law would be applicable.

I ask your Honor to take into consideration that,

although Your Honor has taken into consideration the aspect of the United States teli-communication network in his decision which, of course, the defense disagrees with most specifically.

Still, there is the aspect that perhaps the Canadian government was even in involved in -- they did surveil United States teli-communications even though they picked it up in Canada and perhaps there should be some representation as to what other further and further, if any, surveillance was undertaken by the Canadians in the United States.

THE COURT: You say Title 3 requires the government to disclose any electronic surveillance or wiretapping on demand is applicable to foreign powers?

MR. IANNUZZI: I would suggest, if your Honor please, that Toscanino seems to indicate and as your Honor well wrestled with the problem, when the United States teli-communications network is involved and certain it is involved in the majority of telephone calls that are involved in this case, because they were made between New York and Canada allegedly, and also calls between Mexico and Canada.

THE COURT: Is that what Toscanino says, foreign governments must account for electronic surveillance

and wiretapping.

MR. IANNUZZI: No, sir.

THE COURT: How do we enforce that, by war?

MR. IANNUZZI: Title 3 does apply to the United States tele-communication network. That's what it does say, and naturally, these conversations could not have been conducted except on the United States tele-communications network.

THE COURT: I reject the argument completely and I won't acquire any foreign government to account to the courts of this state for electronic surveillance or wiretapping.

I think that it is clear under Toscanino, as I charitably explained, explicated. I won't use the word "emasculated" but explicated by Lujan. Even asking our government to account for wiretapping in foreign governments, the mere crime that that was done was not enough.

The defendant must produced credible evidence before the government is called upon to even deny. I just can't be sure as to what procedure, who goes first and how you find whether the evidence is credible without a hearing, but that's for the Court of Appeals to explain in later cases, maybe yours.

MR. IANNUZZI: I would like to --

THE COURT: I think the Government has fully complied with all demands that Title 3 requires and I won't require it to do any more than the statute requires.

MR. IANNUZZI: Exception.

THE COURT: Yes, sir.

Any motions?

MR. IANNUZZI: I believe at the time of verdict, we reserved our motions until today and I would move at this time, if your Honor please, all of those motions and applications for mistrial made during the trial.

I don't think it is necessary to reiterate each and all of them at this time since they are spread at length and hopefully completely on the record, but I would just like to indicate for the record that included within but not limited to my present application are those motions relative to the wiretaps in this case, particularly those conducted without regard to Title 3 because, as your Honor has been advised by counsel, it is our contention Title 3 is applicable and moreover, including the fact that wiretapping in Canada, while perhaps admissible is illegal and that the present wiretap law in Canada which is similar to our, presently requires lawfullness.

THE COURT: We don't have to go over all that.

MR. IANNUZZI: I say I won't go over all of it.

THE COURT: You have an exception as the rule states to every adverse ruling I made on the record during the trial, and they are preserved.

They survive the sentencing and, of course, you may argue them before the Court of Appeals.

There's no question about that.

MR. IANNUZZI: Yes, sir.

THE COURT: I don't want to take the time to go over every exception.

MR. IANNUZZI: As I indicated, I didn't want to take the Court's time in going over all them.

Perhaps I highlight them but I do reiterate all of them without specifying which.

I would like to move to set aside the verdict on the ground it is inconsistent with the proof, that is to say, It is not supported by the evidence, particularly when we have such -- and again -- not limited to such inconsistencies of alleged transactions which took place during a period of time when the defendant Dasti allegedly involved in the conspiracy was trafficking in the very narcotics in this case under 24-hour surveillance, and yet no one ever saw any transaction with Mr. Catania --

THE COURT: Spare me a second summation. Just

argue the motions.

MR. IANNUZZI. Insufficies, inconsistencies, are sufficient in my mind to move the verdict to be set aside not substantiated by the evidence and contra-indication of the evidence.

THE COURT: Motion denied.

MR. CLAREY: I would join in the application made by Mr. Iannuzzi.

Also I move for a new trial on the ground the verdict in the instant case as to Mr. Dasti was against the weight of the evidence.

Significant testimony, I believe, in the trial, as reflected by the deliberations of the Jury and their request for exhibits and their questions presented to the Court center around the incidents of January 11, 1971, which involved the testimony of Special Agent Gill, which reflect a surveillance of Mr. Dasti at the Perara Company, at which point Mr. Dasti was thereafter followed to the Bronx, at which time Mr. Dasti was lost to the surveillance team at approximately 12:30 to 1:00 o'clock in the afternoon on January 11th.

According to the report of the Special Agent Gill and his testimony, Mr. Dasti was under full surveillance from the moment he went -- left the

Drake Hotel, went to the Perara Company and thereafter went to the Bronx.

According to the testimony of Mr. Catania, Mr. Dasti allegedly -- Mr. Catania left with Mr. Dasti at the Riverside Plaza Hotel and the Waldorf Astoria on January 11th.

The two testimonies here are in complete contradiction of one another. I believe, based on Mr. Catania's past history --

THE COURT: Apparently the Jury listened to your summation and you don't expect me to give it greater weight than the Jury did as a fact question.

I leave that to the Jury. That's what those questions are. All you're really saying is that the surveillance is difficult and not always successful. I agree with that.

MR. CLAREY: These are serious questions as to the weight of evidence. Perhaps we certainly can't read the minds of jurors when they deliberate.

Those are serious discrepancies in the testimony. I think that the defendants in this particular case are entitled to a new trial on the theory that the weight of the evidence simply does not support the conclusions reached by the Jury as to times, places and actions.

THE COURT: Motion denied.

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